CERTAIN TARIFF AND TRADE BILLS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

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CONTENTS

WITNESSES

MATERIAL SUBMITTED FOR THE RECORD

[Listed below are agency reports and written comments received for the record]

Protocol to Customs Valuation Code and Miscellaneous Bills

H.R. 116

H.R. 4006

H.R. 4248

H.R. 5047

H.R. 5065

H.R. 5147

H.R. 5242

H.R. 5442

H.R. 5452

H.R. 5464

H.R. 6687

H.R. 6975

H.R. 7004

H.R. 7047

H.R. 7054

H.R. 7063

H.R. 7087

H.R. 7139

H.R. 7145

H.R. 7167

H.R. 7173

CERTAIN TARIFF AND TRADE BILLS

MONDAY, MARCH 17, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 334, Cannon House Office Building, Hon. Sam Gibbons presiding.

Mr. GIBBONS. Good morning, ladies and gentlemen. This is a meeting of the Trade Subcommittee of the Ways and Means Committee. This hearing was announced by the Subcommittee on Trade on March 4 to receive testimony of various trade and tariff bills including bills to provide duty-free treatment to suspend duties temporarily and to change certain customs practices in U.S. customs courts.

Given the large number of bills to be heard and the controversial nature of some of them, it will be necessary to continue the testimony from public witnesses on a second day which the subcommittee will announce at a later date.

Today we will hear first from the interested executive branch agencies who will present the administration's positions on all bills. Then we will hear from the witnesses from the general public.

Due to the large number of bills, I must emphasize the necessity for each witness to summarize his statement in order to maximize the time for questions and discussions. Your complete statement will be printed in the hearing record.

At this time I will place in the record the press release of the Subcommittee on Trade announcing the hearings and the reports of the executive branch agencies [see appendix for reports].

[The press release follows:]

[Press release No. 52, Mar. 4, 1980]

CHAIRMAN CHARLES A. VANIK, (DEMOCRAT, OHIO), SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES PUBLIC HEARING ON CERTAIN TARIFF AND TRADE BILLS, MONDAY, MARCH 17, 1980

The Honorable Charles A. Vanik (Democrat, Ohio), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade would conduct a public hearing on Monday, March 17, on certain tariff and trade bills, including bills to provide duty-free entry, temporary suspensions of duty, and to amend certain U.S. Customs practices and the Customs Court. The hearing will be held in Room 334, Cannon House Office Building, at 10 a.m. An additional hearing date will be announced later if necessary.

At the end of this release is a list of the tariff and trade bills on which testimony will be received.

Officials from interested Executive branch agencies will be the first witnesses. Testimony will be received by the Subcommittee from the interested public following the appearances of the Executive branch witnesses.

In order to maximize time for questioning and discussions, witnesses will be asked to summarize their statements. The full statement will be included in the printed record. Also, in lieu of a personal appearance, any interested person or organization may file a written statement for inclusion in the printed record.

Requests to be heard must be received by the Committee by the close of business, Thursday, March 13. The request should be addressed to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102, Longworth Office Building, Washington, D.C. 20515; telephone: (202) 225-3625. Notification to those scheduled to appear and testify will be made by telephone as soon as possible.

In this instance, it is requested that persons scheduled to appear and testify submit 30 copies of their prepared statements to the Committee office, Room 1102, Longworth House Office Building, by the close of business, Friday, March 14.

Persons submitting a written statement in lieu of a personal appearance should submit at least three (3) copies of their statement by the close of business, Friday, March 21, 1980. If those filing statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may submit 50 additional copies for this purpose if provided to the Committee during the course of the public hearing.

Each statement to be presented to the Subcommittee or any written statement submitted for the record must contain the following information:

1. The name, full address, and capacity in which the witness will appear.
2. The list of persons or organizations the witness represents, and in the case of associations and organizations, their address or addresses, their total membership, and where possible, a membership list.
3. The bill or bills on which the witness will be testifying and whether the testimony will be in support or opposition to it; and
4. A topical outline or summary of the comments and recommendations in the full statement.

DUTY-FREE TREATMENT BILLS

H.R. 4006 (Messrs. Won Pat, Evans of the Virgin Islands, and 15 other cosponors)—To apply duty-free treatment under certain circumstances to articles produced in the U.S. insular possessions, and for other purposes.

H.R. 5875 (Messrs. Mineta and Gibbons)—To amend the Tariff Schedules of the U.S. to repeal the duty on certain field glasses and binoculars.

H.R. 6571 (Mr. Breaux)—To amend the Tariff Act of 1930 to temporarily continue until December 31, 1982, the duty-free status of the cost of fish net and netting purchased and repaired in Panama.

H.R. 6687 (Mr. Evans of Virgin Islands)—To apply duty-free treatment under certain circumstances to articles produced in the U.S. insular possessions.

DUTY SUSPENSION BILLS

H.R. 5047 (Mr. Frenzel)—To provide for the temporary suspension of duty on color couplers and coupler intermediates used in the manufacture of photographic sensitized material until June 30, 1982.

H.R. 5952 (Mr. Schulze)—To continue the existing suspension of duties on concentrate of poppy straw until June 30, 1982.

H.R. 6278 (Mr. Shannon)—To suspend the duty on trimethylene glycol di-p-aminobenzoate until December 31, 1982.

H.R. 6673 (Mr. Latta)—To provide for the temporary suspension of duties on water chestnuts and bamboo shoots for three years.

DUTY INCREASE BILLS

H.R. 5242 (Mr. Shumway)—To amend the Tariff Schedules of the U.S. in order to establish a column 2 rate of duty on unrefined montan wax.

MISCELLANEOUS TARIFF AND TRADE BILLS

H.R. 116 (Mr. Bafalis)—To amend section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

H.R. 4248 (Mr. Heftel)—To amend section 8e of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to provide that papayas produced in the U.S. are made subject to any

regulation with respect to grade, size, quality or maturity, imported papayas shall be made subject to the same regulation.

H.R. 5065 (Mr. Lederer)—For the relief of the Chinese Cultural and Community Center of Philadelphia (duty-free entry of ceramic roofing tiles).

H.R. 5132 (Mr. Moore)—To amend the Tariff Act of 1930 to exempt from the definition of vessels non-self-propelled barges under certain conditions.

H.R. 5147 (Mr. Vanik)—To provide a separate classification for parts used for the manufacture or repair of certain pistols and revolvers used for nonsporting purposes.

H.R. 5827 (Mr. Vanik by request)—To amend the Act of June 18, 1934 regarding the submission by the Foreign Trade Zones Board of annual reports to Congress.

H.R. 5829 (Mr. Hamilton)—For the relief of Foundry United Methodist Church (duty-free entry of six bronze bells).

H.R. 6089 (Messrs. Frenzel, Gibbons, Moore, and Vento)—To prohibit until January 1, 1982 the conversion of the rate of duty on certain unwrought lead to ad valorem equivalents.

H.R. 6453 (Mr. Vanik)—To amend the Tariff Schedules of the U.S. regarding the rate of duty that may be proclaimed by the President on sugar imports.

CUSTOMS BILLS

H.R. 5464 (Messrs. Frenzel and Rostenkowski)—To amend the Tariff Act of 1930 to permit drawback for imported merchandise that is not used in the U.S. and is exported or destroyed under Customs supervision.

H.R. 5961 (Mr. La Falce plus cosponsors)—To amend the Currency and Foreign Transactions Reporting Act to (1) make it illegal to attempt to export or import large amounts of currency without filing required reports; (2) allow U.S. Customs officials to search for currency in the course of their search for contraband articles; (3) allow payment of compensation to informers.

H.R. 6394 (S. 1654) (Mr. Rodino)—To clarify and revise certain provisions of 28 U.S.C. on judiciary and judicial review of international trade matters ("Customs Court Act of 1980").

Mr. GIBBONS. I understand that the agency reports other than the ITC have been received on only 5 of the 21 bills so far and only from certain agencies, even though the reports were requested last year on most of the bills.

I hope that something will be done under the Executive Branch Trade Reorganization to expedite agency preparation and response on bills of this type for future hearings and that you will submit the outstanding reports on these hearings as quickly as possible. I understand that Mr. Merkin, representing the Department of Commerce, will state the administration's position on most of the bills.

We also have witnesses from the other interested agencies to present the positions on certain bills within their jurisdiction and will be available to answer questions. In the interest of conserving time, if an agency has a different view from that presented by Mr. Merkin or any of the other witnesses, they should so indicate. If they do not so indicate, we are going to assume they all agree.

We will proceed in the order the bills are listed in the press release.

H.R. 4006

Mr. GIBBONS. The first bill for consideration is H.R. 4006, introduced by Mr. Won Pat, to apply duty-free treatment under certain circumstances to articles produced in the insular possessions. You may proceed, Mr. Merkin.

Will those of you who are in the audience who represent the different agencies try to get as far forward in the room as you possibly can. If you have a position that is different than is presented here, please

stand, identify yourself and state the position of your agency on the bill.

We will go right through these. The first bill is number H.R. 4006. You may proceed.

STATEMENT OF WILLIAM MERKIN, ACTING DEPUTY DIRECTOR, IMPORT POLICY DIVISION, DEPARTMENT OF COMMERCE, ACCOMPANIED BY STEVEN KAMINSKI, INTERNATIONAL ECONOMIST

Mr. MERKIN. Thank you. The administration supports the intent of this bill. The bill would provide a temporary alternative limitation of 70 percent on the value of foreign materials permitted in products of insular possessions. The administration proposes instead a requirement that such products contain value-added in the form of direct processing costs in the insular possessions of at least 25 percent of the value of foreign components that would be subject to duty if imported directly into the United States.

The reason for this proposed amendment is to assure a minimum contribution to the territorial economies and to minimize the likelihood of passthrough industries.

However, there are some unresolved concerns within the administration about guidelines for determining import sensitive products which would not be eligible under the liberalized eligibility criteria. The agencies involved are working diligently to resolve their differences and the administration will submit its views on this issue as soon as possible.

Mr. GIBBONS. When do you think that will be?

Mr. MERKIN. I would hope by the end of this week.

Mr. GIBBONS. You will submit them in writing, of course?

Mr. MERKIN. Yes.

Mr. GIBBONS. We will include them as part of this record before we close the record.

Mr. MERKIN. Yes.

Mr. GIBBONS. The administration favors the intent of H.R. 4006.

H.R. 5875

Mr. GIBBONS. We will go next to H.R. 5875 which was introduced by Mr. Mineta and myself.

Mr. MERKIN. The administration supports enactment of H.R. 5875; we are unaware of any domestic commercial production of field glasses, opera glasses or prism binoculars covered by the bill.

While some domestic production of prism binoculars does exist, this is of high quality for specialized military or technical use and not stocked by retail outlets for public consumption.

H.R. 6571

Mr. GIBBONS. Fine. We will go next to H.R. 6571 by Mr. Breaux.

Mr. MERKIN. The administration opposes enactment of H.R. 6571 as it is currently drafted since it would extend duty-free treatment to the cost of purchase and repair of fish nets and netting in the Republic of Panama without providing corresponding treatment for identical items from other countries.

Such preferential treatment is contrary to the most-favored-nation requirement of the General Agreement on Tariffs and Trade. Enactment would contravene our longstanding policy against trade preferences other than those under generalized systems.

We could support the bill if amended to apply on a most-favored-nation basis. In this case it would also be necessary to narrow the coverage from all fish nets and netting, as it now reads, to only tuna purse seine nets and netting in order to avoid giving broader nonreciprocal concessions to foreign countries.

Mr. GIBBONS. Why do you want to limit it just to tuna?

Mr. MERKIN. The history of this, sir, is that U.S. tuna vessels used to stop in the Canal Zone when it was still a possession of the United States.

Mr. GIBBONS. I am aware of that. Why just tuna nets? Why not shrimp or something else?

Mr. MERKIN. It was my understanding that the intent of the original bill was to help the tuna fleet. They were the ones taking advantage of the Panama——

Mr. GIBBONS. I have shrimp fishermen in my area. What about them? Is the administration opposed to doing it for shrimp fishermen?

Mr. MERKIN. I unfortunately am not aware of the situation of shrimp. I will be glad to look into it.

H.R. 6687

Mr. GIBBONS. Let us go to the next bill by Mr. Evans of the Virgin Islands. Do you have a statement on that? I do not have a number on it.

Mr. MERKIN. I believe it is H.R. 6687. Unfortunately, this was just received by the administration. We are not yet able to give a position. Again, I would recommend that we would have it by the end of this week.

H.R. 5047

Mr. GIBBONS. Let us go on to the duty suspension bills. H.R. 5047 by Mr. Frenzel.

Mr. MERKIN. The administration supports enactment of this legislation. While these products are produced domestically, they are manufactured for captive use. Therefore, a firm without its own captive production is forced to import its needs of these materials.

H.R. 5952

Mr. GIBBONS. Let us go to H.R. 5952 by Mr. Schulze.

Mr. MERKIN. The administration has no objection to the enactment of H.R. 5952. The administration would also have no objection to a permanent duty suspension on this product. There is no domestic production of concentrated poppy straw, a raw material used in the production of opium.

We think the duty suspension would be beneficial to the domestic industry.

Mr. GIBBONS. You do not think we ought to start growing this in this country?

Mr. MERKIN. No, sir.

Mr. GIBBONS. I agree.

H.R. 6278

Mr. GIBBONS. Let us go to Mr. Shannon's bill, H.R. 6278.

Mr. MERKIN. The administration again does not object to enactment of this bill. This chemical, to use the acronym TMAB, is not currently produced domestically.

H.R. 6673

Mr. GIBBONS. Let us go to H.R. 6673 by Mr. Latta.

Mr. MERKIN. The administration does not object to enactment of H.R. 6673. The United States is totally dependent on imports of water chestnuts and bamboo shoots.

H.R. 5242

Mr. GIBBONS. They are good too. Let us go to the duty increase bills, H.R. 5242 by Mr. Shumway.

Mr. MERKIN. The administration opposes enactment of H.R. 5242. Although we sympathize with the difficulties facing the montan wax industry, we believe it is more appropriate for the industry to seek relief under the procedures established by the Congress to insure that the competitive conditions in the industry warrant import relief.

Both section 406 of the Trade Act of 1974, dealing with market disruption from nonmarket economies, and the Antidumping Act of 1921, as amended, provide avenues of relief which the industry may wish to consider.

Mr. GIBBONS. What is montan wax?

Mr. MERKIN. Mr. Kaminski from the Commerce Department can answer that question.

Mr. KAMINSKI. Montan wax is a substance which is used with some solvents, some carbon black and it is used in the production of one-time use carbon paper. With the advent of Xerox machines, the consumption of one-time use of carbon paper has dropped. It is found in one-time business forms and credit card slips.

H.R. 116

Mr. GIBBONS. Let us go to noncontroversial bills like H.R. 116 by Mr. Bafalis.

Mr. MERKIN. The administration opposes enactment of H.R. 116. If enacted H.R. 116 would require that imported tomatoes, mainly from Mexico, would have to comply with the packaging provisions of the Federal tomato marketing order, which is in effect in Florida, even though tomatoes grown and packaged in States other than Florida would not be subject to these requirements.

The requirements of the marketing order are intended to standardize packing the Florida tomatoes with respect to size and maturity. We understand that Florida tomatoes are harvested while fairly hard, and then sorted and packed by machines in containers or crates.

Mexican tomatoes, which account for over 99 percent of imports during the Florida tomato growing season, are in contrast picked when vine ripe and hand packed in crates. Mexican packers must mix different sizes in the crate in order to obtain a snug fit and minimize movement and bruising during shipment.

California growers of vine ripe tomatoes currently use the same packing method. In order to comply with H.R. 116, the Mexican producers would have to pack the same size tomatoes in each crate and incur additional packing costs to protect easily bruised tomatoes from shipping damage.

As can be seen, there is no economic justification in requiring that soft Mexican vine ripe tomatoes be subject to the same packing requirements as the harder Florida mature green tomatoes. It would only raise prices for the American consumer with no commensurate benefits.

It is important to note that imported tomatoes must meet the same quality and health standards set for domestic tomatoes.

Mr. GIBBONS. I am sure we have not heard the last of that one.

H.R. 4248

H.R. 4248 by Mr. Heftel.

Mr. MERKIN. The administration opposes enactment of H.R. 4248. Presently there is in effect a Federal marketing order which regulates the handling of papayas grown in the State of Hawaii. While we believe the principle of equivalent restrictions for domestic and imported commodities is basically sound, inclusion under section 8(e) should be limited to commodities for which low-quality imports pose a threat to regulated domestic commodities. We do not now have evidence that this is the case with respect to papayas.

Supplies of imported fresh papayas have been considered to have no significant effect on mainland sales of Hawaiian papayas. Under those circumstances we see no need for the legislation.

H.R. 5065

Mr. GIBBONS. Let us go next to H.R. 5065 by Mr. Lederer.

Mr. MERKIN. The administration has no objection to the enactment of H.R. 5065. The quantity and value of roofing tiles purchased by the Chinese Cultural Center in Philadelphia is small, $11,790. Because of this, the competing domestic industry is not opposed to the entry of this title duty free on a one-time basis.

We note that while no domestic supplies of these tiles currently are available, manufacturing capability does exist for production of this title and the domestic producer having that capability would oppose a permanent elimination of the duty.

H.R. 5132

Mr. GIBBONS. H.R. 5132 by Mr. Moore.

Mr. MERKIN. The administration opposes enactment of H.R. 5132. It is our understanding that this bill is intended to assist owners of barge carrying vessels to establish the emergency nature of foreign repairs to the satisfaction of the Customs Service so as to be entitled to remission of duties provided under section 466(b) of the act.

However, as currently drafted the bill would exempt from duty all foreign repairs without regard to whether they are necessary repairs, that is, of an emergency nature. The administration would be pleased

to work with the U.S. Customs Service to develop a satisfactory solution to the problems curently faced by owners of nonself propelled barges.

H.R. 5147

Mr. GIBBONS. The next one is H.R. 5147 by Mr. Vanik.

Mr. MERKIN. The administration supports the intent of H.R. 5147. However, as currently drafted we have been informed by the U.S. Customs Service and the Bureau of Alcohol, Tobacco, and Firearms, that it would be impossible to administer.

I believe there is a representative from the Customs Service here today who has some revised language which may be able to resolve this problem.

Mr. GIBBONS. Does the gentleman from the Customs Service want to be heard at this time? What about USTR? Is it in support of this bill, do you know?

Mr. MERKIN. USTR again supports the intent. We do note, however, that this bill would withdraw the U.S. tariff concession which was granted during the multilateral trade negotiations recently concluded. The United States will be subject to claims for compensation.

However, the USTR believes that the intent of the bill is such that they will resolve whatever problems are caused.

If I may, I understand from the Customs Service they do have language they will be pleased to submit to the staff which should resolve hopefully this problem of administration.

Mr. GIBBONS. Is this the gentleman from the Customs Service coming in the room now? We are talking about the bill, H.R. 5147 by Mr. Vanik to provide separate classification for parts used for the manufacture and repair of certain pistols and revolvers used for nonsporting purposes.

STATEMENT OF ARTHUR RETTINGER, OFFICE OF THE CHIEF COUNSEL, U.S. CUSTOMS SERVICE

Mr. RETTINGER. I am Arthur Rettinger. Yes; we do.

The language we would like to suggest is for pistol and revolver parts, section 730.61 for sporting pistols and revolvers at the current rate and 730.62, others, at the new rates of 21 percent, 8.4 and 105 percent suggested by the bill.

Mr. GIBBONS. Could you be a little more specific? I do not know what this bill does.

Mr. RETTINGER. Customs is talking from the standpoint of enforcement of the provisions, and the provisions given concerning the manufacture and repair of pistols and revolvers generally recognized as not particularly suitable for and readily adaptable to sporting purposes. It would be difficult for Customs administratively to enforce. The language I have given as a substitute would appear to accomplish the same purposes as specified by the bill but be simpler for Customs to enforce. In addition, section 2 of the bill should be deleted.

Mr. GIBBONS. Any other comments from the administration on this? Thank you, sir.

H.R. 5827

Mr. GIBBONS. Let us next go to H.R. 5827, which Mr. Vanik by request has introduced.

Mr. MERKIN. The administration supports enactment of H.R. 5827. The bill changes the date of the annual report of the Foreign Trade Zones Board to conform with the changes in the Federal fiscal year.

Mr. GIBBONS. If the members of the committee have any questions you want to go back on, let me know.

H.R. 5829

Mr. GIBBONS. The next bill is H.R. 5829 by Mr. Hamilton, another one of these church bell problems.

Mr. MERKIN. The administration is opposed to enactment of H.R. 5829. The administration prefers that private relief bills waiving duties be enacted only if goods purchased cannot be supplied by domestic producers. There is currently one U.S. producer of peal bells who participated in bidding for this sale.

While in this case the additional expense of the duty on the bells may have been a small consideration in the selection process, and while the purchaser is a nonprofit religious organization, we believe that a refund of duty creates an unfair competitive situation for the sole domestic bell manufacturer whose market is largely comprised of nonprofit organizations.

H.R. 6089

Mr. GIBBONS. The next bill must have a lot of merit to it. It is H.R. 6089 by Mr. Frenzel, Mr. Gibbons, Mr. Moore and Mr. Vento.

Mr. MERKIN. The administration opposes enactment of H.R. 6089.

As part of the Tokyo round of multilateral trade negotiations 500 selected specific compound rates of duty, including the specific rate on unwrought lead which is encompassed by this bill, were converted to the ad valorem rate.

This action was taken as responsively as possible to the concerns of U.S. producers about the erosion of protection provided by specific and compound duties. The effect of the duty conversion was to freeze tariff protection on converted items at 1976 levels and to prevent further erosion of those levels resulting from price increases.

Before deciding to pursue any conversion on March 14, 1978, the Office of the Special Trade Representative requested the International Trade Commission to conduct an investigation and to provide the Special Trade Representative with its advice on converting all specific and compound rates of duty in the Tariff Schedules of the United States to ad valorem rates.

The International Trade Commission held public hearings on this matter on April 24, 1978, and submitted a report to the Special Trade Representative on June 1, 1978. The report recommended a column 1 rate of 5.1 percent ad valorem for unwrought lead. Our private sector advisory structure established under section 135 of the Trade Act of 1974 identified this item as one of the items that the industry wished to convert in the multilateral trade negotiations.

Notice was published in the Federal Register of August 22, 1978, and comments from interested parties were solicited by the Special Trade Representative. No comments were received by the Special Trade Representative or by the International Trade Commission in opposition to conversion of the duty on unwrought lead to 5.1 percent ad valorem.

During the following month we negotiated an appropriate U.S. compensation for this rate conversion with our trading partners, as is required by the general agreement on tariffs and trade. The administration is sympathetic to the concerns of the domestic lead consuming industry over having to pay increased duties on imports of unwrought lead as a result of the conversion and rapid increase in lead prices.

We note, however, that consumers of other imported products including other metals which have historically been subject to duties on an ad valorem basis always have had to pay incremental increases in duty whenever the prices of those imported products rose.

The proposed conversion back to specific rates occurs during periods in which lead prices are dropping. Economic forecasts studied by the Department of Commerce indicated decline in demand resulting in the cutback in such areas as new car production and leaded gasoline.

While we do not suggest that lead prices will drop to the 30-percent level existing in 1976, we do not believe that the record levels reached in 1979 will recur at least in the short run. The downward trend in prices is expected to continue, thus minimizing the effect of the rate conversion.

However, I would like to note that, as I said, the administration is sympathetic to the problems facing the lead consuming industry and I would like to note that the administration does have authority under section 124 of the Trade Act of 1974 to make further tariff reductions, although rather small ones. I think the limit is 20 percent.

Part of this process would be that the International Trade Commission would have to do a study on the effect on the domestic industry of further tariff cuts and considering the controversy on this issue, it might be worthwhile to pursue such a study so that we can see exactly what kind of effect there would be on both the lead producers and lead consumers.

Mr. GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Isn't it true, sir, that when you say the administration held hearings and determined the ad valorem rate and you did not get a lot of complaints, lead was at quite a different price level?

Mr. MERKIN. Yes; that is true.

Mr. FRENZEL. I think that you cannot really fault the industry for not complaining at that time.

Mr. MERKIN. No, sir.

Mr. FRENZEL. I think what you are saying is that the Government does not have the ability to be flexible and to take into account differing conditions. You are saying we made a deal 2 years ago, and that is the only deal that can prevail.

Mr. MERKIN. I do not like to think the administration is that unflexible.

Mr. FRENZEL. I think you have a great opportunity to prove it.

Mr. MERKIN. I believe, sir, that this bill is one possibility to resolve the problem. It may not be the best one from the vantage point of the domestic producing industry. That is why I suggested we may want to look at the possibility of reducing the ad valorem rate which we converted to. Well, with the MTN reduction I believe it is 3.5 percent.

Mr. FRENZEL. We would like to see that too. I am kind of disappointed that the Office of the U.S. Trade Representative is not represented here. I understand that you are carrying their proxy today.

Mr. MERKIN. I am in a unique situation. I am here representing the Department of Commerce because I was working there as we prepared for this testimony. I have just recently transferred to the Office of the U.S. Trade Representative. And they suggested since I was going to be here that I could speak for them on this issue.

Mr. FRENZEL. Why don't you?

Mr. MERKIN. OK, I will, sir.

Mr. FRENZEL. Tell us what you are going to do to this rate.

Mr. MERKIN. As I said, under section 124 of the Trade Act if the administration were to consider further reduction of the duty on this item, we would have to request advice from the International Trade Commission on the economic effects of such reduction.

I think it is safe to say that we are seriously considering making such a request to the International Trade Commission.

Mr. FRENZEL. Even if the ITC gave you a favorable report and even if you were smart enough to go ahead with the cut, the most you can cut is 20 percent?

Mr. MERKIN. That is correct.

Mr. FRENZEL. Which is better than a poke with a sharp stick. I think perhaps not helpful under the circumstances. The problem that the sponsors of the bill see is that while you predict a decrease in lead prices in the immediate future, if we are to look at commodity prices over the long haul we do not see any great probability that you are going to have any more than modest temporary downs and probably an escalation in commodity prices, including lead in the future.

So, the problem that we see as bad now tends to get worse in the future. Our problem is that we see consumers of these products, batteries being a prime example, having to pay a good deal more in the marketplace for the products that they buy as a result of an arbitrary position of our Government to assess a rate of duty which is not needed to protect anybody.

Not only do they have to pay it on batteries made of imported lead, but they have to pay it on every battery because the domestic price of course will equate itself with the competitive level.

I do not think the Office of the U.S. Trade Representative has been forthcoming on this issue. I think it is an inflationary cost that we should not have to meet in this society. I do not think you have been very helpful.

Mr. MERKIN. Being my first week at the Office of the U.S. Trade Representative, I do not pretend to speak for those who dealt with this issue before me but I certainly would give a commitment to the subcommittee that we will pursue this with all vigor.

Mr. FRENZEL. When you were negotiating with Mexico, there was a possibility to make a significant reduction.

Mr. MERKIN. Yes.

Mr. FRENZEL. But based on the whole context of the negotiation you determined that you could do only what you did?

Mr. MERKIN. That is correct.

Mr. FRENZEL. Therefore, the residual authority left for you to cut is so modest that I do not think we have any alternative other than to try to pass a bill like this. This may not be the best bill. I really think we have to go beyond your ability because, from my standpoint,

you let us down in your negotiations. From your standpoint, you could go no further than you went.

Mr. Chairman, I yield the balance of my time.

Mr. GIBBONS. How much lead do we import and whom do we import it from?

Mr. MERKIN. If I may turn to Mr. Kaminski on this.

Mr. KAMINSKI. In 1979 we imported 184,000 short tons. The primary suppliers were Mexico, Peru, and Canada. As I recall, this roughly accounts for approximately 15 percent of total domestic consumption.

Mr. GIBBONS. You say the administration can ask the U.S. International Trade Commission to do a study? How long will that take?

Mr. MERKIN. I believe the law says that they must respond within 6 months. Obviously it could be expedited but I could not commit the International Trade Commission.

Mr. GIBBONS. We have Canada, Mexico, and Peru, and that is about 15 percent of consumption. Is the import price dragging the domestic price up?

Mr. KAMINSKI. The import price at the current time has dropped as well as the domestic price.

Mr. GIBBONS. I assume the two follow each other, is that right?

Mr. KAMINSKI. Yes.

Mr. GIBBONS. How much is the ad valorem duty?

Mr. KAMINSKI. At the current time it is 3.5-percent ad valorem. It was converted January 1 of this year.

Mr. GIBBONS. What would happen if we reduced it to zero? Maybe some of the public witnesses will want to talk about that. There is no sense passing any more inflation on than we have to. Let us go next to Mr. Vanik's bill, H.R. 6453.

Mr. MOORE. Are you through?

Mr. GIBBONS. No; go ahead. I am sorry. Let us go back to 6089.

Mr. MOORE. Thank you, Mr. Chairman.

The position the administration has taken in opposition has nothing to do with the increased cost to lead producers because of Government regulations, does it?

Mr. MERKIN. Not that I am aware of, sir.

Mr. MOORE. Is there a need in your opinion to protect the profits of lead producers at this point by allowing this increase in going to an ad valorem tariff rate?

Mr. MERKIN. I do not know that it is protecting the profits, not being privy to the information on the individual firms.

Obviously there is concern within the administration for both the well-being of the domestic producers and the well-being of the domestic consumers of this product.

Mr. MOORE. That is being on both sides of the fence. Normally we hear of the administration coming in and testifying for or against these kinds of matters. They normally have some knowledge of what the state of an industry is.

Is it in trouble financially or is it working full capacity? Are the profits good at this point? Or is this merely a mathematical problem we have here, going from one rate to another and you are not having anything to do with the lead producers in that process?

Mr. MERKIN. My information is that the lead producers are in a tenuous situation. I do not know if Mr. Kaminski can talk to the specifics of the industry. It is my understanding that the industry is affected by imports and that is certainly a consideration that the administration is aware of.

Mr. MOORE. The price of the product has gone way up. I would like you to be more specific on this because I have contrary information about the financial status of lead producers. I think most members of this subcommittee when they vote on one of these things, try to determine whether it is necessary to protect the lead producers.

Mr. MERKIN. I think that is an excellent question. Unless Mr. Kaminski has some information readily available, I would request that the subcommittee allow us to delve into this and prepare a report on the situation instead of my conjecturing which does not do anybody any good.

Mr. MOORE. Right. Does the other gentleman have information?

Mr. KAMINSKI. At the present time there appears to be no apparent problem among domestic lead producers. However, forecasts studied by the Department of Commerce, both our own surveys plus those of private consultants, show that in the short run there will be a decline in lead consumption.

Now, the depth of this decline and the effect of that on domestic production is difficult to estimate and to anticipate the length of time that such a drop would occur. I think that pretty much sums it up.

At the present time we do not see a problem but we see down the road that there could be a problem and that a duty reduction could possibly have an adverse effect on domestic producers. This, of course, could change with an upswing in the economy.

Mr. MOORE. Of course, any duty reduction would do that.

Mr. KAMINSKI. That is correct.

Mr. MOORE. Normally we like to see such things; we want to see facts and figures to show what they can produce at full capacity, and if you reduce the duty and let more lead come in, whether that in any way interferes with the market of domestic lead production.

We also know what profit figures are. It appears to me, if we look at 1976, the price of domestically produced lead has more than doubled. I would like for you to be more specific. Is this really the reason why you are opposing this bill? Is it out of concern of the profit of the lead producers or is it something else? If it is out of concern for lead producers, where are the facts and figures to show the concern?

Mr. KAMINSKI. There are a number of factors involved in our opposition to the bill. I understand from our talks with the people on whose behalf this bill was introduced that they are concerned about the effects of paying more duty and that they have tried, in working with you to draft this bill, to develop a program which is the best route to follow, and that was reconverting the rate from the ad valorem equivalent back to the specific.

Now, there are a few problems in this. One is that we went through the whole process of converting these duties that we paid for in the trade negotiations. We wondered what would happen in 2 years from now, when the temporary conversion back would expire and what the situation in the market would be. We also considered a tariff anomaly

that would be created. This bill covers unwrought lead except lead bullion. The lead bullion duty rate is also 3.5 percent. This bill would lower the duty on the unwrought lead. We felt that this would also encourage foreign upgrading of lead bullion to unwrought lead for the purpose of reducing the amount of duty they would have to pay with a commensurate loss in U.S. value added.

In studying the situation with respect to lead, we also viewed similar situations in which the administration has supported bills providing for a temporary duty reduction—in other words, some level which would be agreeable to both lead producers and lead consumers.

The administration supports such bills when it feels that the domestic producing industry cannot meet total domestic demand, which brings us back to the original problem.

Over the next 2 years, which is the period we are talking about in this bill, what is the economic outlook for lead? If indeed there is going to be a declining consumption and production domestically, a large decline affecting employment in the domestic lead industry—which seems to be indicated by the Department of Commerce, at least in the short run—then we would have some difficulty in saying: All right, why don't we temporarily reduce the duty.

These are the major considerations which went into the development of this position.

Mr. MOORE. You understand that, in developing your position, it is not the intent of the drafters of the bill to prevent going to an ad valorem rate; it is just that we didn't think the purpose of going to the ad valorem rate was to increase the actual dollars paid in duties.

As a matter of fact, it seems to me in the MTN we were trying to reduce the net duties across the board in the case of lead. This conversion of a specific rate to the ad valorem rate actually increases it. That is understood by the administration, I assume.

Mr. KAMINSKI. We understand the problem. Of course, there are many factors at work. Not only was there conversion on this product at the same time there was a duty reduction; again at the same time there was a significant increase in the price of lead, which obviously was not even anticipated.

Mr. MOORE. This sounds like the games the Japanese play. We sign treaties to reduce duties and we find that the duties are higher. I wonder if we are going to be as smart as the Japanese or just poor imitators. I don't think that was the intent of the MTN. Most of us thought the duties were going down, not up.

I am not sure I am understanding you yet.

Mr. Chairman, I would like to ask that the record be left open and ask the administration to submit their computations to show that the domestic lead industry is going to be in trouble during the 2 years of this bill. I am led to believe by the people in the industry, that is not the case.

If that is not the case, I don't know what the problem is here in asking that we just delay for 2 years in going to this ad valorem tax base. Can you gentlemen produce that information?

Mr. KAMINSKI. Yes, sir.

Mr. MOORE. Do you gentlemen see any connection between the price of domestically produced lead and the gross price of the imported

lead or with the duty thereon? Is there a connection between the two? Does one follow the other?

Mr. KAMINSKI. There is a world market price on lead, which is determined by supply and demand factors. I think what you are referring to has to do with the inflationary figure which the consumers of imported lead have developed, which would indicate that the increased duty prices enable the domestic producers to also increase their prices domestically on the whole range of lead products.

Mr. MOORE. Say in the last 3 years has the gross price of imported lead been roughly equal to the domestic price of lead?

Mr. KAMINSKI. I can check.

Mr. GIBBONS. While the witness is checking that, may I suggest that those of you who are standing in the rear—it makes me nervous to see you standing—if the ladies will come up first and have a seat if they would like to, anywhere around, even up here where the Democrats usually sit, and next we will take the infirm or aged and then after that we will take the Irishmen because this is a special day.

Come forward and don't torture yourselves by standing. This hearing can go on a long time today. You are welcome to have seats anywhere around the room. After all, you are paying for them. Come on up.

Mr. KAMINSKI. Our price data shows that in the years 1976 through 1978 the U.S. producers' price of lead averaged slightly higher than the world price. This was not true in 1979, when the average U.S. producers' price was less than the world price.

Mr. MOORE. I am not sure what it shows.

Mr. KAMINSKI. I am not sure what it shows, either.

Mr. MOORE. What percent of the lead we are using in the country is imported?

Mr. KAMINSKI. Fifteen percent of the unwrought lead covered by this product number, comparing it with a like product produced domestically.

Mr. MOORE. Fifteen percent that we use is imported?

Mr. KAMINSKI. Yes, sir.

Mr. GIBBONS. Mr. Moore, let us give them a week to get their facts and figures in line. Then we will close the record and act as we normally do on these things.

Mr. MOORE. I just want to be sure that we have good justification. This is inflationary.

Mr. GIBBONS. You are right.

Mr. MOORE. I want to be sure we have some good facts and figures.

Mr. GIBBONS. Right. You have a week to get it in, in writing. Deliver it to the staff and send copies to the members, please.

[The information follows:]

The domestic lead industry showed an unusually strong performance during 1979. All the major markets for lead increased during 1979 and the production of primary lead increased five percent reaching its highest level in five years. Record prices, as high as 65 cent/lb., were reached. At the present time production utilization remains close to full capacity. Exact profitability figures for lead operations of all domestic firms are not available. We understand from the Securities and Exchange Commission that profitability data is only available on a company-wide basis. As such, the lead operations for a number of firms would be aggregated with other operations within each company. Hence, profit figures do not necessarily reflect the situation with lead. While unable to produce prof-

itability figures, we would agree that the profit picture in 1979 was excellent for both lead producers and consumers. However, it should be noted that the lead industry is cyclical and good years are needed to offset periods of low profitability. For example, the periods 1970–1971 and 1975–1976 were characterized by soft prices, mine closures, production slowdowns, increased stocks, decreased employment and poor profits.

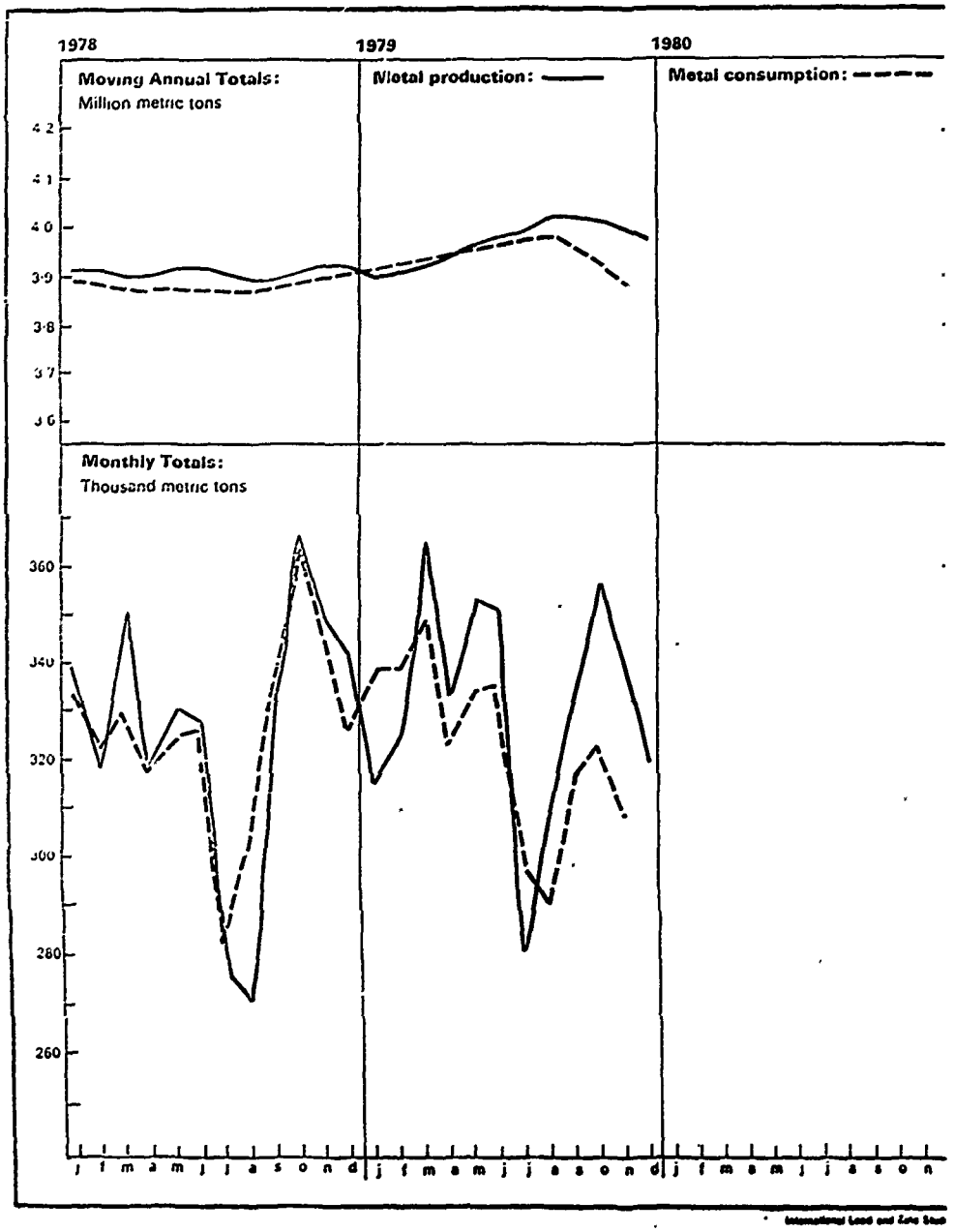
Lead consumption is expected to drop sharply during 1980. Lead is used in the manufacture of automobile batteries, tetraethyl lead for leaded gasoline, ammunition, construction materials, solder and pigments. We wrote that there are a number of factors that will result in decreased demand for automobile batteries, which account for 61 percent of total lead consumption in 1979. Decreases in automobile production, indicated by lay-offs by automobile manufacturers, will reduce demand for batteries for original equipment manufacture. Secondly, the mild winter of 1979 has reduced the need for replacement batteries. Finally maintenance-free batteries, which use less lead but require pure lead or lead with a low antimony content are gaining popularity. Gasoline conservation and retirement of pre-1975 cars without catalytic converters will reduce the demand for leaded gasoline containing tetraethyl lead. The downturn in new building and home construction brought about through high interest rates will reduce demand for lead products and solder used in construction and wiring. These declines will be reflected in decreased prices and consumption.

The Department of Commerce cannot predict the length of time the market will stay soft nor the level at which prices may stabilize. The Department of Commerce in its 1980 Industrial Outlook predicts that total shipments will drop approximately 9 percent. It should be noted that these estimates were made prior to September 1979 before the extent of gasoline conservation and winter weather conditions were known.

When demand is slack and lead prices low, tariff protection is most needed by the domestic industry. During these periods greater quantities of imports enter the market place and further exacerbate market conditions. Past periods of low demand have been marked by falling prices and increased imports.

An Annex is attached containing a number of charts which show general market trends.

Lead: Current trends: Metal production and consumption
Plomb: Tendances actuelles: Production et consommation de métal



Lead: Current trends: Metal production and consumption
Plomb: Tendances actuelles: Production et consommation de métal

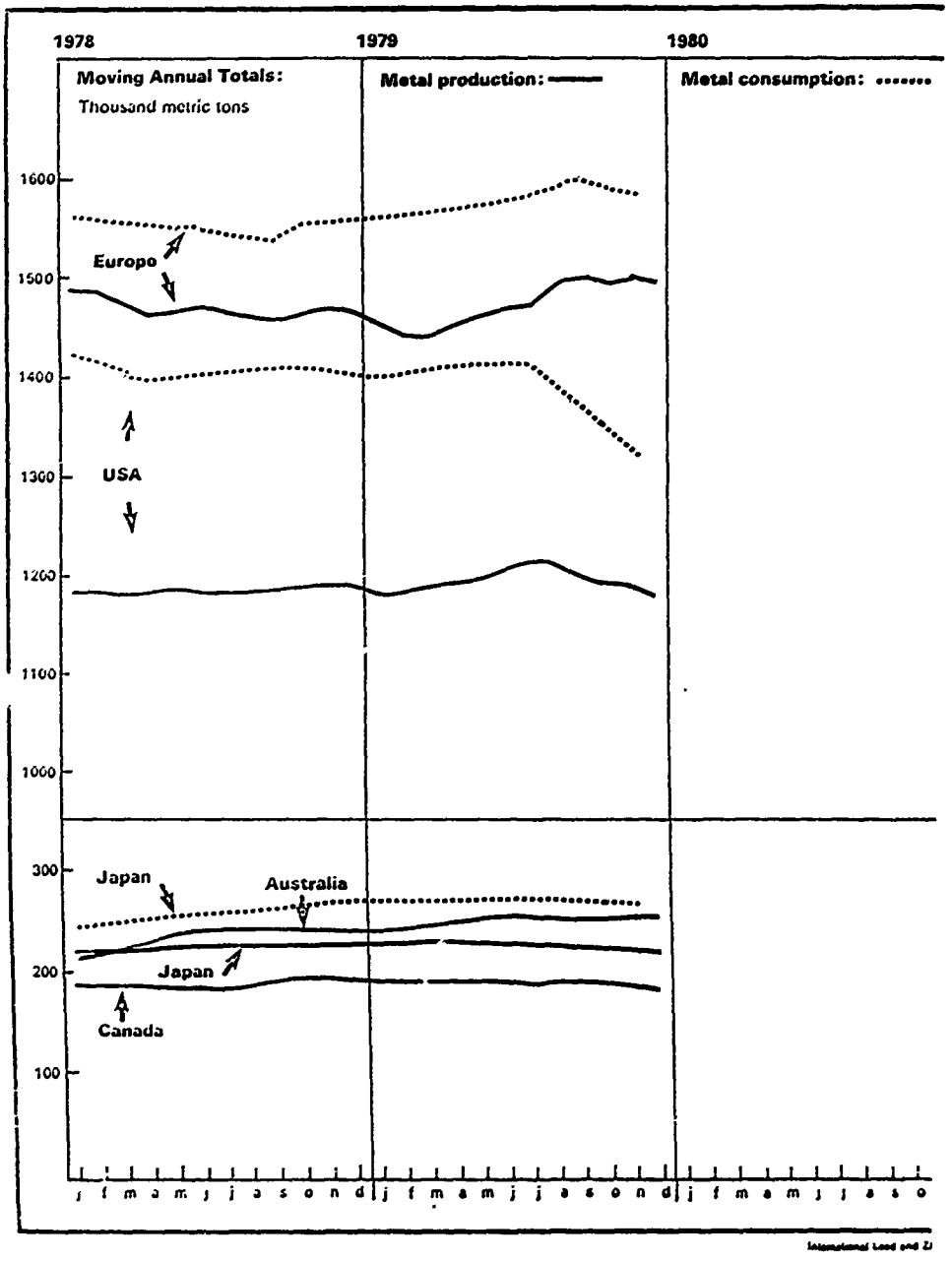
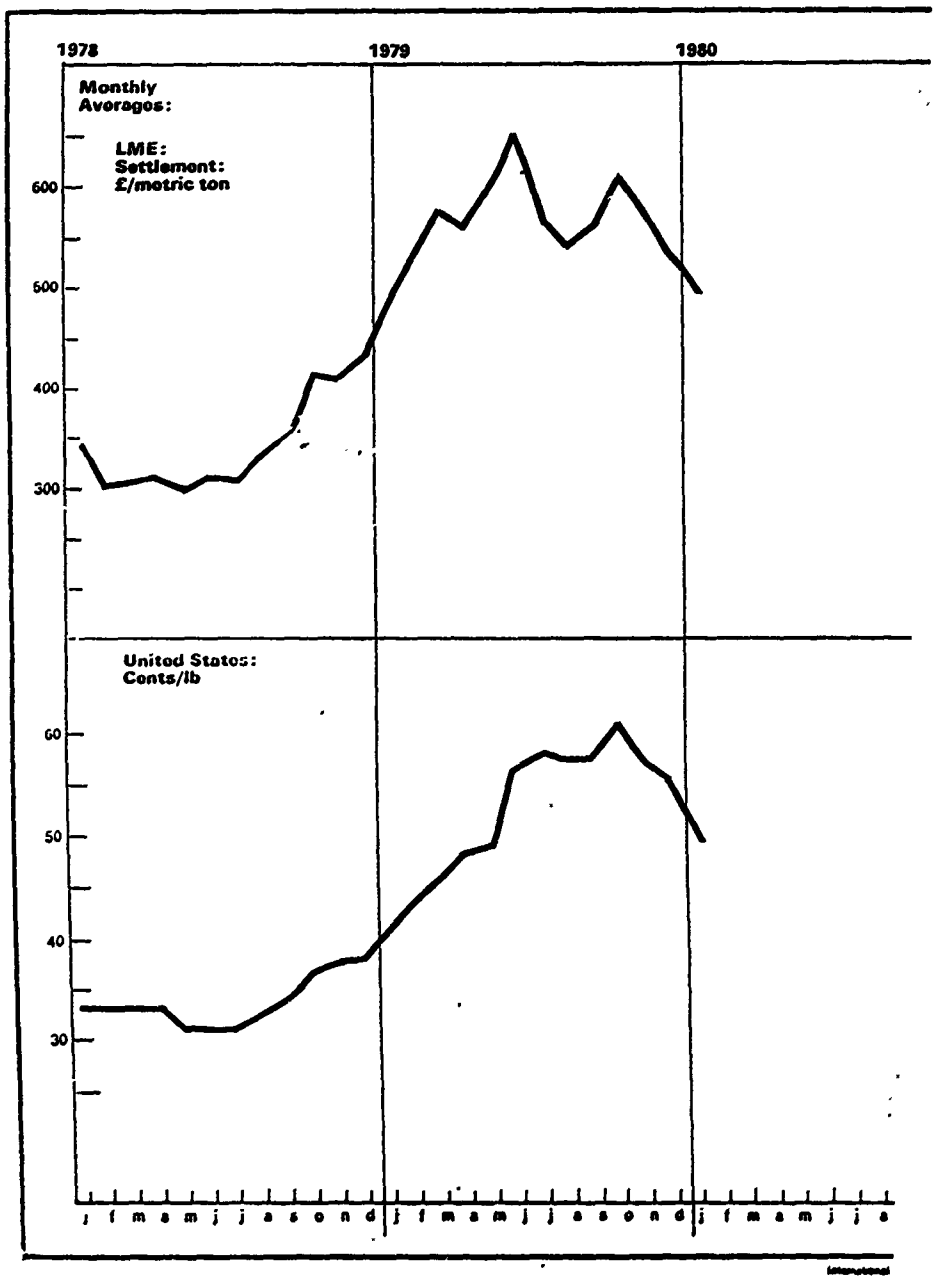
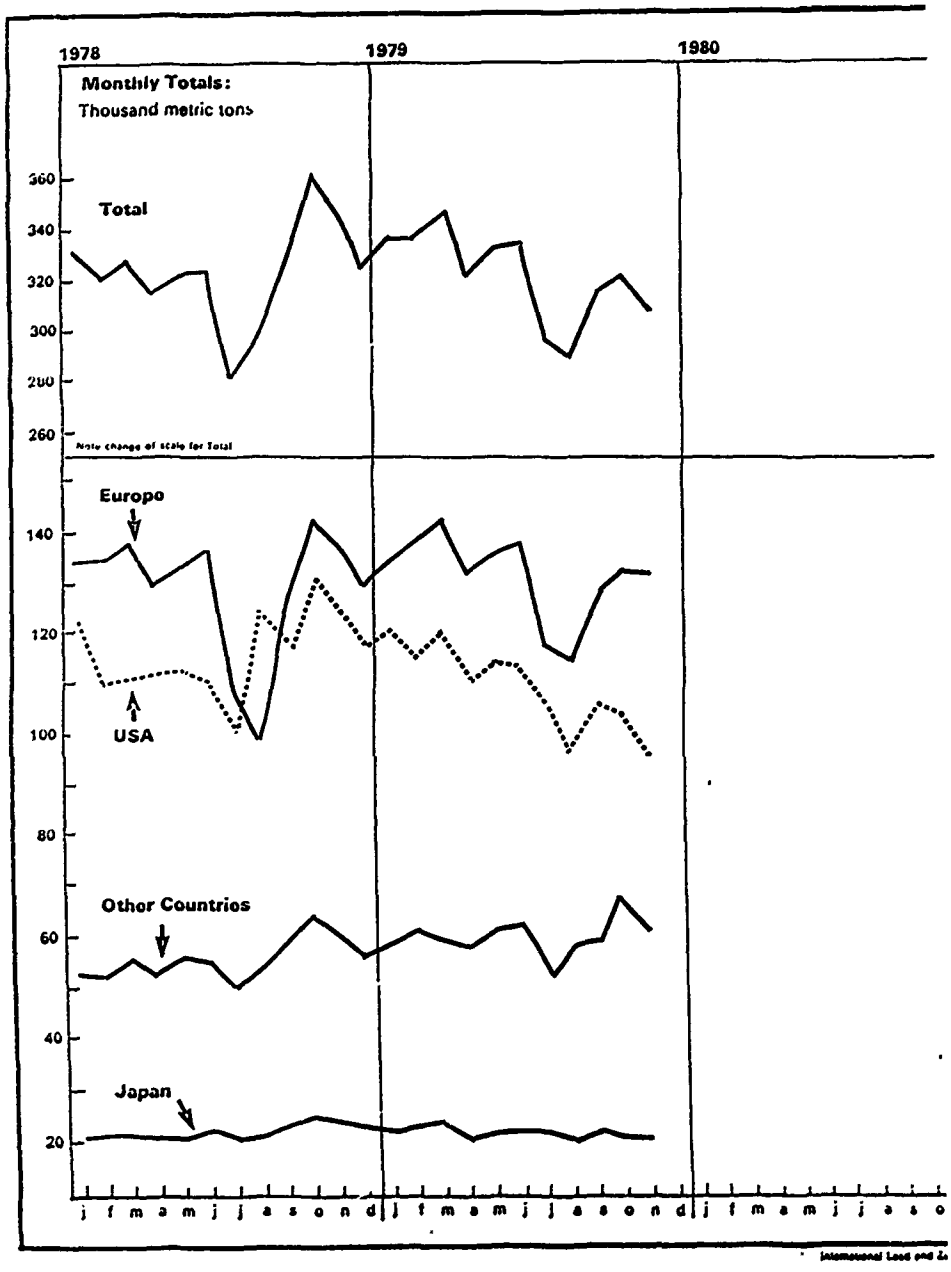


Figure C

Lead: Price trends
Plomb: Tendances des prix



Refined Lead: Metal consumption
Plomb raffiné: Consommation de métal



PRIMARY LEADS: TRENDS AND PROJECTIONS 1974-80

[In millions of dollars except as noted]

Item	1974	1975	1976	1977	1978[3]	1979[3]	Percent change 1978-79[3]	1980[3]	Percent change 1979-80[3]
Industry (SIC 3332):									
Value of shipments[1]	838.2	728.8	711.5	701	720	900.0	25.0	820	−8.9
Value added	198.1	123.8	152.3	191.7	205.0	215.0	4.9	205.0	−4.7
Value added per production worker-hour (dollars)[2]	40.5	25.3	30.5	46.7	51.0	55.0	7.8	46.0	−16.5
Total employment (thousands)	3.0	3.1	3.2	2.5	2.5	2.6	4.0	2.6	0
Production workers (thousands)	2.4	2.5	2.6	2.0	2.0	2.1	5.0	2.1	0
Average hourly earnings (December—dollars)	5.04	4.90	6.62	7.31	8.00	[4] 8.60	[4] —	9.25	.....
Year-to-year percent change in average hourly earnings (December-December)	7.9	−3.0	35.1	10.4	9.4	[5] 7.5	[5] —	7.6	—
Year-to-year percent change in industry price index (December-December)[6]	NA	NA	NA	NA	NA	NA	NA	[5] NA	NA
Capital expenditures	5.8	13.8	24.0	33.0	40.0	40.0	0	45.0	12.5
Product (SIC 3332):									
Value of shipments[7]	287.7	222.1	249.5	256.2	289.3	395.0	36.3	310.0	−21.5
Quantity shipped (unit of measure) short tons[7]	736	595	695	638	655	675	3.2	690	−1.6
Year-to-year percent change in producers price index (December-December)[6]	36.0	−3.2	6.4	33.9	8.6	[5] 53.5	[5] —	—	—
Trade:									
Value of exports	20.5	7.4	1.3	3.4	3.6	5.1	41.7	3.0	−41.2
Value of imports	47.9	34.3	54.0	133.5	142.3	162.0	14.1	125.0	−22.8

[1] Value of all products and services sold by the primary lead industry (SIC 3332).
[2] Estimated except for hourly earnings, price indexes, and 1978 trade data.
[3] Forecast.
[4] As of June 1979.
[5] July 1978 to 1979.
[6] December 1968 is base period for index.
[7] Value (quantity) of shipments of primary lead produced by all industries.

Source: Bureau of the Census (industry and trade data), Bureau of Labor Statistics (hourly earnings).

TABLE 1.—LEAD IN THE UNITED STATES

[Thousands of short tons, unless otherwise noted]

	1974	1975	1976	1977	1978	1979[3]	1980[3]	1984[3]
Consumption[1]	1,599	1,297	1,490	1,582	1,579	1,610	1,580	1,580
Total production[1]	1,409	1,299	1,385	1,444	1,474	1,470	1,425	1,415
Primary	710	641	658	612	629	660	650	675
Secondary	699	658	727	832	845	810	775	740
Producer inventories[1] (end of period)	38	82	44	15	19	13	25	35
Imports:[4]								
Refined lead	118	100	144	264	249	210	215	225
Percent of consumption	7.4	7.8	9.7	16.7	15.8	13.0	13.6	14.2
Ores and concentrates	95	88	76	73	58	110	70	60
Total imports (lead content)	213	188	220	337	307	320	285	285
Percent of consumption	13.3	14.6	14.8	21.3	19.4	19.9	18.1	18.0
Exports (refined lead)	6	21	6	10	8	8	8	8
U.S. produced price[5] (cents per pound)	22.5	21.5	23.1	30.7	33.7	51.0	.....	.....

[1] U.S. Bureau of Mines.
[2] Industry and Trade Administration (BDBD) estimate.
[3] Forecast.
[4] Bureau of Census.
[5] Metals Week.

Source: 1980 U.S. Industrial Outlook; U.S. Department of Commerce/Industry and Trade Administration, January 1980.

Response to questions regarding the Administration's position on various bills concerning the tariff treatment of bells

There is only one remaining domestic producer of bells, McShane Bell Foundry of Glen Burnie, Maryland. This firm has the ability to cast and tune bells for chime and peal bell applications. The firm has been unable to demonstrate that it can manufacture bells for use in carillons. Carillons are keyboard instruments containing a set of 23 or more chromatically tuned bells. McShane does not have the capability to cast and finely tune such a large number of bells. For this reason the Administration has not opposed private relief bills for carillon bells.

The Administration opposed the enactment of H.R. 5829, a private relief bill for a refund of duties on an eight bell swinging peal because the domestic firm can produce a directly competitive product.

Response to question regarding the Administration's position on a proposed amendment of H.R. 5047 to have the description of color couplers and coupler intermediates covered by the bill conform with the description of these products as defined under TSUS items 907.10 and 907.12 for the duty suspension currently in effect.

The Administration strongly supports the proposed amendment. We note that the product descriptions as drafted are too broad and would include many chemicals not necessarily chiefly used in the manufacture of photographic sensitized materials. The Administration recommends that the bill be amended to continue the present duty suspension on color couplers and coupler intermediates. These products are currently provided for in the Tariff Schedules under:

907.10 Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure (provided for in item 403.60, part 1B, schedule 4) to be used in the manufacture of photographic color couplers

907.12 Photographic color couplers (provided for in item 405.20, part 1C, schedule 4).

We note that TSUS items 403.60 and 405.20 in the current suspension remain in effect until July 1. These descriptions will need to be modified on that date to conform with classification changes resulting from tariff agreements reached in the Multilateral Trade Negotiations.

Response to questions regarding the Administration's position on H.R. 5147.

The amended classification which is suggested to ensure enforceability is as follows:

Pistol and revolver parts

730.60 Designed for sporting purposes.

730.62 Other.

Response to questions regarding the Administration's position on H.R. 6571.

The question was raised why the Administration proposes limiting duty-free treatment to imports of tuna purse seine net and netting and not to others, such as shrimp netting. Prior to the transfer of the Canal Zone to the Republic of Panama, it was the tuna industry and not other fishing industries which regularly obtained nets duty-free in the Canal Zone. Given the advantages to the tuna fleet, which fished in waters off Panama, of purchasing nets and netting in the Canal Zone, the domestic net industry did not manufacture many tuna nets and cannot currently meet the demand of the U.S. tuna fleet. The purpose of H.R. 6541 is to give temporary relief from the newly-imposed 50 percent duty to the tuna fleet, which are the only fish net users affected by the change in the status of the former Canal Zone.

This is not the case with the shrimp industry. The U.S. shrimp fleet has traditionally obtained its nets from domestic sources. There are 10 plants strategically located in the U.S. to serve the needs of the shrimp fleet. These manufacturers, which provide employment in areas where other opportunities are scarce, have the capacity to meet the requirements of the shrimp fleet.

Response to questions regarding the Administration's position on H.R. 6687.

The Subcommittee requested the opinion of the U.S. Customs Service regarding the feasibility of administering the provisions of the proposed bill. The Customs Service is reviewing the matter and will respond at the earliest possible date.

TECHNICAL CHANGES

Suggested technical changes for H.R. 6278, a bill to suspend the duty on trimethylene glycol di-p-aminobenzoate.

We have several concerns regarding the bill as worded.

First, the bill proposes to amend the Tariff Schedules of the United States (TSUS) to provide for a new item number 405.08, for which the duties would be suspended. TSUS number 405.08 is an incorrect designation. Tariff changes of the nature being proposed are shown in TSUS schedule IX. The Office of Nomenclature at the U.S. International Trade Commission (ITC) suggests that the number 907.05 be utilized to designate the product for temporary duty free treatment.

Secondly, the ITC prefers that the formal chemical name be utilized in the tariff schedule. The description should read, "1,3-propanediol-di-para-aminobenzoate." To avoid confusion the common chemical name, trimethylene glycol di-p-aminobenzoate, could be inserted parenthetically following the formal name.

At the present time the product is provided for in item 403.60, as indicated in the bill. However, we note that as a result of the Multilateral Trade Negotiations and the new Customs Valuation Code, many changes will be occurring, particularly in the benzenoid chemical schedule. The proposed effective date for these changes is July 1, 1980. TSUS item 403.60 will be affected by these changes and will cease to exist following implementation of the Customs Valuation Code.

As additional changes in the tariff schedule are currently being considered by the Administration, it is not possible at this time to assign the TSUS number under which the product will be classified after June 30. We understand that the ITC plans, as a result of the implementation of the Customs Valuation Code, to develop a list of conforming changes, including modifications of Schedule IX, for inclusion in a Presidential proclamation. Were this bill to become law prior to July 1, the necessary modification in the product description would be made in the conforming changes. However, if the bill is enacted after July 1, the product description must reflect the change in the TSUS number.

Suggested technical changes regarding H.R. 6453.

We would like to point out two technical drafting problems. The first is that the bill is ambiguous in its references to the interests to be considered. It is assumed that a comma was intended after the words "sugar market" and that the word "of" should be placed before the words "materially affected." Secondly, most raw sugar imports enter under TSUS item 155.20. That item provides a current column-1 rate of .6625¢ per pound for sugar of 100 degree polarity. However, in world trade raw sugar is measured in terms of "raw value" by converting it to a 96 degree polarity basis. Under the rate formula in item 155.20, the .6625¢ rate is reduced by .009375¢ for each degree of polarity under 100 degrees. In the case of 96 degree polarity sugar, the current rate of duty is .625¢ per pound. If the new minimum rate under the bill (.01¢ per pound raw value) were considered to apply to 96 degrees polarity raw sugar (the most likely interpretation) there would be a question of how to apply the rate formula now established in item 155.20 to be consistent with the above interpretation. The new rate for 100 degree polarity raw sugar under item 155.20 would have to be .0106¢ per pound and the reduction for each degree of polarity would be .00015¢ per pound.

One possible way to avoid an ambiguity for administrative purposes would be to insert in parentheses after the words ".01¢ per pound raw value" in the bill, the following: "(96 degrees polarity)" and a further set of parentheses at the end of the headnote 2(i) language in Section 1 which would read as follows: "(The rate formula for purposes of TSUS item 155.20 column-1 shall be: 0.0106¢ per lb. less 0.00015¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.00685¢ per lb.)"

Technical changes regarding language on entry and withdrawal for certain tariff bills.

A number of proposed bills indicate the changes in dutiability would apply to articles ". . . entered, or withdrawn from warehouse, for consumption on or after . . ." Effective September 10, 1979, Customs Regulations were changed to provide a two-part process for the entry of imported merchandise. The first part is now called the entry and is equivalent to the release of the import merchandise. The second part is the entry summary and consists of the filing of the entry documentation up to 10 days after entry. Because of the Regulations changes, the legislation should be amended so that (a) the comma between "warehouse" and "for" is deleted and (b) a comma is inserted between "consumption" and "on".

This change would apply to the following bills: H.R. 5242 (montan wax), H.R. 5875 (field glasses), H.R. 5952 (poppy straw), H.R. 6089 (unwrought lead), H.R. 6278 (TMAB), and H.R. 6673 (water chestnuts, bamboo shoots).

In addition, the language in Section 2 of H.R. 5047 (color coupler) should conform to this model.

Mr. GIBBONS. We have with us this morning Adam Benjamin, Jr., a member of the Appropriations Committee.

STATEMENT OF HON. ADAM BENJAMIN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. BENJAMIN. I do want to indicate my enthusiastic support of H.R. 6089 and indicate to the subcommittee that I represent the area of northwest Indiana, in which is located Hammond Lead Products, represented by the ad hoc committee of consumers that are appearing before you today. The company is represented by one of its chief engineers, William Peter Wilke, who will testify later

I ask unanimous consent of the subcommittee to revise and extend my remarks in support of the bill.

[The prepared statement follows:]

STATEMENT OF HON. ADAM BENJAMIN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

On Friday, March 14, President Carter announced his plan to combat inflation and asked Congress for its support to make this goal possible. H.R. 6089, to temporarily prohibit the conversion of duty rates to add valorem equivalents on certain unwrought lead, will aid the President's anti-inflation plan.

President Carter has also indicated on numerous occasions that the United States is anxious to assist domestic industries to become more competitive with foreign imports. In many instances this posture might invoke "protective" policies. However, in this instance H.R. 6089 simply insures that U.S. consumer industries are not operating from an unfair position due to world structure and demand affecting the price of unwrought, unalloyed lead in the United States.

On January 1, the U.S. tariff on unwrought lead became 3.5 percent ad valorem reflecting the conversion of a specific rate of duty of 1 1/16 cents per pound to an ad valorem rate equivalent to 1¾ cents per pound, an increase of 65 percent. I doubt seriously that this was the intent of the STR at the Tokyo Round of the Multilateral Trade Negotiations (MTN).

The intent of these negotiations was to reduce existing trade barriers. The unfortunate result, predicated on faulty and untimely data, was to increase duties that will affect not only the domestic lead industry but will ultimately add more than $30 million to prices paid by the American consumer.

H.R. 6089 is carefully drafted to avoid two inflationary factors, without any adverse affects on the job market. One, it avoids a tariff duty to the lead consumers. Two, it avoids a corresponding increase in the cost of domestically produced lead which certainly will follow since U.S. demand exceeds supply by at least 15 percent.

On December 5, I addressed Special Trade Representative Rubin Askew regarding the inequity resulting from the tariffs on lead and litharge (3.0 percent) (lead oxide), certainly inconsistent with the U.S. policy of higher tariffs on manufactured items than raw materials. His response of February 4th stated, "The relationship between lead and litharge, which accounts for a relatively minor proportion of U.S. lead consumption, is certainly one example of the kind of tariff anomaly which can be created inadvertently."

Representative Askew further commented, "We will be working with producers and consumers of lead on the question of further tariff reductions, in the hope that some solution to this problem may be worked out."

H.R. 6089 would correct a portion of this situation immediately. The President's general tariff-cutting authority has expired and the arsenal that Mr. Askew has at his disposal is, at best, minor residual tariff-cutting authority. Consequently, H.R. 6089 is indispensable if the STR truly desires to have the problem corrected and a portion of the anomaly resolved. The ad valorem duty schedule has increased the duty over 65 percent at today's prices and over 100 percent at the prices that prevailed just three months ago. At a time when the federal government is attempting to determine every avenue possible to reduce inflationary pressures, H.R. 6089 appears to be a painless and just route. I encourage your favorable action on this bill.

Thank you for this opportunity to present my views to the Subcommittee. I congratulate Congressmen Frenzel, Gibbons, Moore and Vento for introducing the measure.

Mr. GIBBONS. Without objection, you may do so.
Mr. BENJAMIN. Thank you.

H.R. 6453

Mr. GIBBONS. We have finished with lead for a while.
Mr. Vanik has a statement in support of the next bill, H.R. 6453. At this point, I will put Mr. Vanik's statement in the record. Without objection, it will be done.
[The statement follows:]

STATEMENT OF CHAIRMAN VANIK

The United States imports one-third of its sweetener needs, but the price of imported sugar determines the price of the domestic product. Since America is dependent on imports of sugar and since sugar prices have doubled and tripled in the past half year, it would be a major aid in the fight against inflation to permit the tariffs on sugar to be reduced.

Producers should have nothing to fear from this bill, because the President will be free to vary the tariff upward as sugar prices decline. Indeed, in order to support the sugar loan program, he will be compelled to restore tariffs once prices drop.

This bill will be an anti-inflationary tool during times of high sugar prices.

Mr. GIBBONS. You may proceed.
Mr. MERKIN. The administration supports enactment of H.R. 6453. The imposition of a lower rate of duty, particularly given the current price level of sugar, would have an inflationary impact. The administration is concerned about the well-being of the domestic sugar industry. We do note that this bill retains the President's current authority to deal with any economic dislocation if sugar prices decline.
Mr. GIBBONS. Are there any questions about sugar from the members?
Mr. FRENZEL. We are a little confused as to what the bill does, Mr. Chairman.
Mr. GIBBONS. Go ahead and explain this bill a little more, if you will, please.
Mr. MERKIN. The bill would enable the President to lower the minimum tariff rate on sugar from 0.625 cents per pound to 0.01 cents per pound raw value.
Mr. MOORE. You are opposing this bill?
Mr. GIBBONS. No; they are favoring it.
Mr. MOORE. You are on the wrong side.
Mr. GIBBONS. How can you be for inflation one time and against it the next?
Mr. FRENZEL. It only proves there are no small minds.
Mr. MERKIN. May I make a comment?
Mr. GIBBONS. Go ahead.
Mr. MERKIN. I believe that the sugar bill has a minimum and a maximum tariff that the President can impose. What this bill is doing is lowering the minimum that is available to him. During the current high price situation, we support the lower tariff; but, as I noted, if the situation changes so that the domestic sugar industry is facing some adverse impact, the President could use his authority to implement a higher tariff.
Mr. FRENZEL. I presume that your new department will be the President's adviser on this matter.

Mr. MERKIN. Excuse me.

Mr. FRENZEL. I presume that the U.S. Trade Representative will be the President's principal adviser on whether to take advantage of the minimum tariff rate should this become law. I was informed that you have just moved to the current minimum. I note now that the price of sugar is moderating also. In the event of passage of this bill, would you have a strategy to recommend to the President or not?

Mr. MERKIN. I don't have one at this moment but I am sure we would carefully review the situation.

Mr. FRENZEL. I am sure you would. Thank you, Mr. Chairman.

Mr. MOORE. Mr. Chairman.

Mr. GIBBONS. Yes, sir.

Mr. MOORE. I assume that the administration understands, in taking this position in favor of this bill that should the tariff go down if this bill passes and should the world sugar market decline, and the United States has a lot of domestic sugar producers on loan program, and you don't have that mechanism there to get the domestic price up by virtue of higher tariff on foreign sugar coming in, couldn't this increase the loss to the U.S. Treasury in the loan payment program to sugar farmers?

Mr. MERKIN. Could I ask somebody who is expert on sugar to come up and address your question.

Mr. DOERING. I am William Doering, of the Foreign Agricultural Service of the Department of Agriculture. Mr. Merkin has spoken for the administration, and the Department of Agriculture concurs in what he has said. We also concur in what you have just said.

It is not at all absolutely certain that the President would use this authority which Mr. Vanik's bill would extend. It would depend on sugar prices, which, as the chairman in particular knows, are very volatile. Even in recent days they have moved downward. Nobody knows what the situation will be by the time this bill becomes enacted, if it is enacted.

I am here simply to assure you that, if the bill is enacted and the question of utilization of the authority by the President comes up, the Department of Agriculture would look very hard at the effects of the use of the authority on domestic producers and the Department's support program in the light of the facts existing at that time.

I might add that the request for the position was received only in the latter days of February, and that the Department's legislative report is in the advanced stage, and I hope and expect that it will be submitted relatively promptly, Mr. Chairman.

Mr. MOORE. It stands to reason—I think you are agreeing with what I am saying; I want to be sure we are on the same track—if you have something that reduces the tariff at the time the market price of sugar is below the loan program, all you are doing is increasing the liability of the Treasury to pay those farmers by almost the same amount you reduce the market price by virtue of reducing the tariff.

Mr. DOERING. You are correct. I would point out that the import fees on sugar, although not now currently operative on raw sugar because of the world price situation, remain in effect and, if the prices go low enough under the terms of the existing Presidential proclamation, actual finite fees would have to be imposed by action of the Secretary of Agriculture. He would not have judgment to exercise on that. The proclamation, as we all know, is binding and strictly mechanical.

Mr. MOORE. Thank you, Mr. Chairman.

H.R. 5464

Mr. GIBBONS. Thank you. Let us go to a few customs bills now, H.R. 5464, by Mr. Frenzel and Mr. Rostenkowski.

Mr. MERKIN. With your permission, I would like to ask Mr. George Stewart, of the Department of the Treasury, to address this bill.

Mr. GIBBONS. Come forward, Mr. Stewart.

Mr. STEWART. Mr. Chairman, George Stewart is my name. I am in charge of the Drawback in Bonds Branch at Customs. The administration supports inclusion of the same condition drawback provision in the Tariff Act. However, Treasury recommends two amendments regarding the time period for drawback, and incidental operations performed on imported merchandise.

With regard to the time period, the newly negotiated MTN agreement on subsidies and countervailing measures states that a drawback for imports that are physically incorporated into an export may be allowed if the import or export operation both occur in a reasonable time period, normally not to exceed 2 years.

This agreement was approved by the Congress in section 2 of the Trade Agreements Act of 1979, Public Law 96–39. Although H.R. 5464 addresses a different condition for drawback, Treasury believes that the time period should be uniform. Therefore the bill should be amended by deleting "three-year" in line 4, page 2 of the bill, and substituting "two-year."

With regard to incidental operations, the bill does not clearly provide that the incidental operation is to be performed on the imported merchandise itself. For example, the Department is concerned that, as drafted, the bill would be interpreted to allow the imported merchandise to be used while in the United States to test other merchandise. The Department believes that this would constitute a use of the imported merchandise prohibited by subparagraph 1(b) of the proposed same condition drawback provision.

Therefore Treasury recommends that the bill be amended by deleting "with respect to" in line 17, page 2, and substituting "on the," and the word "its" should be inserted after "imported merchandise" in the same line.

Subject to these amendments, the Department of the Treasury supports the amendment to H.R. 5464. However, the Department would like to note two facts. The bill contains a 99-percent refund provision so that 1 percent can be retained to cover administrative expenses. However, this 1 percent is not adequate to cover the administrative expenses of the Customs Service to perform this function.

In addition it should be noted that the 1 percent does not come to the Customs Service, and with regard to this bill Customs feels that it does not now have the manpower to handle the anticipated magnitude of work which could be involved in the bill. Thank you, Mr. Chairman.

Mr. GIBBONS. Is there any further discussion?

Mr. FRENZEL. I am interested in your last statement. Over the last couple of years, this committee has urged Customs to ask for the authorization of enough agents to do this job, and consistently the Service

has come to us with a request for fewer personnel than we think is necessary to do the job and with large amounts of overtime.

I would say that your statement that you don't have enough people is consistent with this committee's opinion of your total effort. But you have never been willing to ask for additional people.

I don't know that we can help you in this case. You are a slave to OMB or somebody in your inability to get new positions created—as a matter of fact, even to fill the ones that are authorized. I think it is an interesting statement but I don't see it as persuasive here. We have no remedy because you won't give us one.

Mr. STEWART. In that regard, I really can't speak to the general subject of manpower. I was instructed to comment on this bill that additional manpower will probably almost certainly be needed for this bill.

Mr. FRENZEL. How much manpower?

Mr. STEWART. It would eventually run to 50 man-years.

Mr. FRENZEL. How many?

Mr. STEWART. Fifty additional personnel in time, depending on how the bill is used, how much use is made of the bill.

Mr. FRENZEL. Mr. Chairman, the committee gave them $5 million more than they asked for in their authorization. Maybe they can apply a few of them to this matter.

I do not understand the 2-year limitation that you are suggesting as an amendment. You usually ask for 5 years.

Mr. STEWART. In manufacturing drawback at the moment there are 5 years, sir.

Mr. FRENZEL. So you are suggesting that the form of this bill, which is 3 years, should be made 2 years?

Mr. STEWART. Our recommendation that the other be reduced will also, I understand, be forthcoming.

Mr. FRENZEL. Your suggestion is to conform it to another request which you are going to bring in later?

Mr. STEWART. Yes, sir.

Mr. FRENZEL. Should we not conform it to what is now in the law, and then change them both if it is necessary?

Staff informs me I misinterpreted your original statement. Your statement was to conform it to the MTN code on subsidies?

Mr. STEWART. That is right.

Mr. FRENZEL. You will be bringing in a recommendation to conform the other to that particular agreement, too, which makes it a horse of a different color.

Thank you, Mr. Chairman. I have no further questions.

H.R. 5961

Mr. GIBBONS. Let us go next to H.R. 5961, by Mr. LaFalce.

Mr. MERKIN. With your permission, I would like to ask Mr. William Nickerson, of the Department of the Treasury, to speak on this bill.

Mr. GIBBONS. Come forward, sir.

Mr. FRENZEL. Mr. Chairman, before the witness begins, it is my understanding that we are to hear only the administration witnesses.

Mr. GIBBONS. Today, yes.

Mr. FRENZEL. And there will be an opportunity for public witnesses?

Mr. GIBBONS. Yes; we had better make sure the administration is back here to hear the public witnesses.

Mr. FRENZEL. Yes; I wanted to make that point. I thank the chairman.

Mr. GIBBONS. We will set a specific date for witnesses on Mr. LaFalce's bill.

You may proceed.

STATEMENT OF WILLIAM W. NICKERSON, DEPUTY ASSISTANT SECRETARY (ENFORCEMENT), DEPARTMENT OF THE TREASURY; ACCOMPANIED BY ROBERT J. STANKEY, ADVISER (FINANCIAL CRIMES AND FRAUDS), AND STUART P. SEIDEL, ASSISTANT CHIEF COUNSEL, U.S. CUSTOMS SERVICE

Mr. NICKERSON. My name is William W. Nickerson, Deputy Assistant Secretary for Enforcement of the Treasury. Appearing with me on my left, Mr. Robert J. Stankey, Adviser on Financial Crimes and Frauds and Stuart Seidel, Assistant Chief Counsel, U.S. Customs Service.

I would like to take this opportunity to thank you for inviting me to appear today and comment on H.R. 5961. I would further like to thank the chairman for the priority he set in the seating of Irish people and wish him a very happy St. Patrick's day.

With your permission, I would like to briefly summarize my prepared statement which I have offered for the record.

Mr. GIBBONS. Fine. We will put your prepared statement in the record.

Mr. NICKERSON. Mr. Chairman, the administration and U.S. Treasury Department strongly urge the passage of H.R. 5961. As you may be aware, we testified on behalf of the provision of the bill before the House Banking Committee last November.

In addition, we have delivered testimony in support of this measure before a number of other committees in both the Senate and the House. We are pleased that you are considering the bill and hope that you will also support it.

Title I of the bill would amend section 231 of the Currency and Foreign Transactions Reporting Act to make it illegal to attempt to export or import currency or other monetary instruments without filing the required report with customs.

Title II would amend section 235 of the act to authorize customs officers to search suspected individuals at the border for currency and other monetary instruments without a search warrant when they have a reasonable cause to suspect that a violation has occurred.

Title III would permit the Treasury Department to pay a percentage of any large recovery to anyone who provides significant information about violations of the act. I would like to emphasize that this bill imposes no additional reporting requirements on any individual or group.

Although we have good reason to believe that at a minimum, hundreds of millions of dollars are being carried and shipped out of the United States to purchase illegal drugs, we have been able to detect only a very small part of those funds. In 1978, for example, less than $46 million was reported being transported from the United States to drug-significant countries.

While we cannot expect that everyone who transports currency will file a report, it is obvious that we are not receiving all the reports that should be filed. The proposed amendments are needed to deal with this problem.

One of the purposes of the act was to impede the exportation or currency related to illegal activity; payments for drugs, untaxed money skimmed from legitimate business, and profits from organized crime. Unfortunately, it has not been possible to enforce the act as Congress intended. An overwhelming number of the prosecutions and seizures have been related exclusively to the importation rather than to the exportation of currency and monetary instruments.

We believe that the problems we are currently encountering in our efforts to enforce the act with respect to departing couriers would be greatly alleviated by the provisions in H.R. 5961 and strongly urge its enactment.

That concludes my summary and I would be pleased to respond to any questions the subcommittee might have at this time.

[The prepared statement follows:]

STATEMENT OF HON. WILLIAM W. NICKERSON, DEPUTY ASSISTANT SECRETARY OF THE TREASURY (ENFORCEMENT)

Mr. Chairman and members of the subcommittee, I thank you for inviting me here today to discuss H.R. 5961—a bill to amend the Currency and Foreign Transactions Reporting Act (a part of the Bank Secrecy Act)—and why the Treasury Department so urgently requests its passage. As you may be aware, we testified on behalf of the provisions of this bill before the House Banking Committee last November. Subsequent to our testimony, the bill, with a few minor amendments, was reported out of the Banking Committee. We urge you to carefully consider the merits of the bill. We believe that after having done so, you will support it.

Title I of the bill would amend section 231(a) of the Bank Secrecy Act to make it illegal to attempt to export or import currency or other monetary instruments without filing the required reports. Title II would amend section 235 of the Act to authorize Customs officers to search suspected individuals at the border for currency and other monetary instruments without a search warrant when they have a reasonable cause to suspect that those persons are in the process of transporting monetary instruments for which a report is required. Title III would add a new section to the Act which, by offering as a reward a percentage of funds recovered, would encourage people to supply information to the Government about individuals who have violated the reporting provisions of the Currency and Foreign Transactions Reporting Act. The Banking Committee has amended the bill by increasing the amount which need not be reported from $5,000 to $10,000, by requiring that the Treasury Department report to the Congress within 18 months after the effective date on the results produced by the bill's provisions, and by postponing the effective date of the bill to October 1, 1980..

I would like to emphasize that this bill would impose no additional reporting requirements on travellers.

Although we have good reason to believe that, at a minimum, hundreds of millions of dollars were carried or shipped out of the United States to purchase illegal drugs, we have been able to detect only a very small part of those funds. In 1978, for example, less than $46 million was reported as being transported to drug significant countries. It is obvious to us that we are not receiving all of the reports that should be filed, and these amendments are needed to help us deal with this problem.

The best way to illustrate the problems we encounter in enforcing the currency reporting requirements is to compare the situation we face when an individual enters the United States to the situation when he leaves.

Imagine an individual arriving by plane from abroad with $50,000 in cash in his luggage. As he approaches the U.S. Customs inspector for routine inspection and clearance, he is notified of his legal obligation to file the Customs Form

4790 (Report of the International Transportation of Currency and Other Monetary Instruments) because a specific question concerning this obligation appears on the baggage declaration from given to him on the airplane. In addition, signs notifying travellers of this requirement are posted at ports of entry and verbal notice of the requirement may also be given by Customs personnel. Should he attempt to avoid filing this form, it is conceivable that the currency would be discovered by the Customs inspector in the course of the routine inspection. If the individual declines to file the report after being specifically advised of his obligation to do so, and the currency is discovered, there is no question that a violation of the Act has occurred. The individual has clearly transported the currency into the United States without filing a report, and the Customs inspector clearly had the authority to search his baggage. This violation can easily be expanded through investigation by Customs agents to determine whether the funds were transported in furtherance of a violation of another Federal law. This is the easy case.

Imagine, however, a private airstrip in Florida, where a small private jet has taxied out on the runway as an impeccably dressed man, carrying an attache case, walks out to meet the plane. A Customs officer, on the scene only because he had just received an anonymous phone call that someone was leaving for a known narcotics producing country from that airport with $250,000 in cash, stops the well-dressed man and asks where he is going. After the man indicates that he is going abroad, the Customs officer asks if he is carrying more than $5,000 in currency or monetary instruments, and if so, states that a report must be filed. The man responds in the negative, at which time the Customs officer opens the attache case and discovers that it is filled with $100 bills. This individual could very well escape prosecution.

In this situation, the individual had not yet departed from the United States when the Customs officer stopped him. Although there is little doubt that within the next five minutes he would have been airborne, transporting the $250,000 without having filed the required report, and beyond the reach of Federal law enforcement authorities, some courts have held that it is not a violation of the Act to attempt to transport currency out of the United States without filing the report and the actual violation does not occur until the individual has left the United States and is therefore beyond our jurisdiction.

This incident also dramatizes the limitation on the scope of the Customs authority to verify the individual's negative response by opening the attache case. In this instance, the facts leading to the search very likely do not constitute probable cause, the search standard in the Act. Thus, even if there is a violation of the Act, the evidence may be suppressed. It is evident that under existing statutes the Customs inspector has much greater authority to examine an incoming individual's luggage, which gives him a good opportunity to discover a violation of the reporting requirement. Customs is, however, virtually powerless to enforce the Act with respect to departing travellers.

Another problem is providing coverage at the place of departure. Customs personnel are not generally stationed at smaller airports or even major departure ports, as they are at points of entry. There is no routine screening of individuals as they leave the United States. Therefore, to a very large degree we must rely on prior information to alert us to future departures. In the case cited, the officer had received a phone call which proved to be reliable. However, with our present resources, we must be selective and thus may not always be able to respond to every anonymous tip. We must develop sources of information concerning the financial operations of organized narcotics traffickers. To encourage people who have this sensitive information to contact the law enforcement community, it is, unfortunately, sometimes necessary to offer something valuable in return. Often, the informant risks his life by giving information on major criminal activities and therefore substantial payment may be necessary. It should be noted, however, that this amendment will not cost the Government anything. Payments will only be made after a substantial recovery has occurred.

In sum, we believe that the problems we are currently facing in enforcing the Act with respect to departing violators would be greatly alleviated if H.R. 5961 were enacted.

Mr. GIBBONS. Mr. Frenzel.

Mr. FRENZEL. The problem here seems to be from civil libertarians who object to the fact that it may be possible to harass citizens and visitors under this law. How do you respond to that criticism?

Mr. NICKERSON. Congressman, I would like to first assure you that in our support of this act—and hopefully its passage and enactment into law—we in no way intend to restrict or in any way impact upon travelers other than we are currently doing. As I stressed in my summary, this piece of legislation, if enacted, would cause no additional reporting.

In fact, if the Congress were to take into account the amendment offered by the Banking Subcommittee that the reporting requirements would be raised from $5,000 to $10,000, there would actually be less reporting under the amended act than there is now.

Mr. FRENZEL. I am not worried about the reporting. It is the search I think that bothers people. You have a port somewhere, and the person gets on or off an airplane; an informant says he is a drug dealer, so you guys go in and search him. Maybe he is an aged schoolteacher coming or going somewhere and he does not want to be searched. I think that is the problem that is raised.

Mr. NICKERSON. I think the search provisions we are asking for here, and I will defer to Mr. Seidel, if you wish, are not greater than the search provisions that we currently have for incoming travelers. We are not interested in harassing anyone, and certainly not the average citizen, but one has to look at the currency situation.

Mr. FRENZEL. But, you need a warrant now to search.

Mr. NICKERSON. Not for incoming.

Mr. FRENZEL. How about outgoing?

Mr. NICKERSON. Right now we have case law in, I believe, the southern district of Florida which requires us to follow the probable cause standard that is currently in the bill.

Mr. FRENZEL. If you can search them, you don't need the bill.

Mr. SEIDEL. If I may, on the inbound searches right now the standard that we are seeking in the bill is identical to the standard which presently applies to searches for merchandise at the border. The difference, of course, is that the bill would provide for searches for currency and other monetary instruments.

To the extent that the standard is identical, I can assure the Congressman that we have no intention of harassing individuals, and we will use the same discretion that we presently use.

As far as outbound searches are concerned, at the time the Senate originally considered the bill, they did put in a requirement which would seem to require a warrant for outbound searches based on probable cause. However, the courts have recognized that there are situations where a warrant cannot be obtained and they built into an exception from the warrant requirement.

However, the bill as presently written still requires probable cause which is inconsistent with the authorities of customs officers at the border for other types of goods and products coming in or going out. We are seeking identical authority for the outbound search as that which we presently have in a merchandise area.

Mr. FRENZEL. But, it is not in the bill as it is now written.

Mr. SEIDEL. It is not in the bill as now written.

Mr. FRENZEL. You mean it is not in the law?

Mr. SEIDEL. It is not in the law.

Mr. FRENZEL. It is in the bill?

Mr. SEIDEL. That's right, it is in H.R. 5961. The standard that would be applied would be reasonable cause to suspect. This term was recently interpreted by the Supreme Court. I think if we comply with the Supreme Court's requirements, there will not be any harassment or undue searches. It still requires that officer articulate a basic suspicion for the search and we would not act in general, we would probably act only on specific information related to individuals.

Mr. NICKERSON. I would like to add that this bill was reviewed by the Office of Legal Counsel of the U.S. Justice Department, as well as by our own counsel, and OMB and was found not to have constitutional infirmities. We feel the bill is constitutional and that it is one of the tools in our arsenal needed to fight drug trafficking and other related crime.

Mr. FRENZEL. I yield the balance of my time, Mr. Chairman.

Mr. GIBBONS. Mr. John LaFalce, sponsor of the bill, a Member of Congress from New York State.

Mr. LAFALCE. To clarify a point, are you saying that present existing law puts a limitation upon the ability of Customs to make a search right now which limitation does not exist within the U.S. Constitution?

Mr. NICKERSON. That's correct.

Mr. LAFALCE. In other words, absent this law if this law did not exist, you would have greater constitutional authority to make a search of outward citizens at the border than you do under existing law, is that right?

Mr. SEIDEL. That's correct.

Mr. LAFALCE. In other words, what this law intends to do is simply to remove the restriction imposed by the existing law on your law enforcement powers and give you those powers intended by the U.S. Constitution?

Mr. SEIDEL. That's correct. The limitation is in the statute, not in the Constitution.

Mr. LAFALCE. I am glad I clarified that.

Mr. SEIDEL. Thank you.

Mr. GIBBONS. In 1970 when this law was enacted the standards of probable cause were put in it. What has changed so much between 1970 and today that you want to go from probable cause to reasonable cause?

Mr. NICKERSON. I think what we have found is a tremendous use of currency in criminal activity. As recent studies by the Internal Revenue Service point out, in 1976 there was nearly $35 billion in untaxed moneys directly related to criminal activities. Crime is cash business.

We have no doubt in our minds that there are a number of couriers who daily or weekly go out of this country, black-bagging large amounts of currency into havens, banking havens.

The current statute has a chilling effect in terms of our searching and in terms of our trying to monitor these kinds of currency transactions. I think the amendment is needed. One need only to look to the State of Florida to see what the problem is.

Mr. GIBBONS. I was thinking, do most of these people travel by commercial arrangement or do they travel by private arrangement?

Mr. NICKERSON. It is a combination of both, Mr. Chairman.

Mr. GIBBONS. I have a feeling you are going to really kick up the renting of private planes in Florida it looks like. That is not bad for the economy, however.

What inhibits you now under the probable cause definition from making a search?

Mr. NICKERSON. So long as we can meet the standard required for probable cause, we can make the search. A lot of times unfortunately the informant giving us the information is a first-time informant. The time interval between his being in receipt of the information and the actual departure of the courier is so limited that we do not have the time to perform the additional investigations which would be necessary to establish that standard.

I think we are being faced with an epidemic here, not just in terms of drugs, but organized crime, white-collar crime, and that we have to take strong measures to see that the laws are enforced.

Mr. GIBBONS. Do you now routinely give any link of surveillance to people leaving this country?

Mr. NICKERSON. Not on a routine basis.

I would like to clarify something, Mr. Chairman. I saw a letter that was written to one member which alleged that what we were going to do is have outbound lines quite similar to the inbound lines. I would like to make it perfectly clear that this is absolutely not the case. We have no intention of putting any legitimate traveler through rigors that we find totally unnecessary.

The search would be on a case-by-case basis where we have information, which we believe to be true, that an individual is attempting to circumvent the law and, in effect, transport large amounts of cash out of the country without reporting.

Mr. GIBBONS. There is nothing in this bill that would prevent you from setting outbound lines, is there?

Mr. NICKERSON. I don't think there is anything now that would prevent us from setting up outbound lines. We have neither the manpower nor desire to do so. I don't think that is a very expenditious way, a reasonable way to approach this issue.

Mr. GIBBONS. Are there other means of moving money or credit through the banking system and so forth?

Mr. NICKERSON. Electronic transfers, Mr. Chairman, can be used to move money.

Mr. GIBBONS. Would this bill have any impact on that?

Mr. NICKERSON. None whatsoever. We currently have the authority in the statute to monitor electronic transfers. However, we have chosen not to do so. We find it would be too cumbersome. The volume and velocity of the transfers would not make it in the best interest of the government to pursue that role.

Mr. GIBBONS. You are going to have to do that if you start searching at ports of embarkation.

Mr. SEIDEL. I do not believe so. You are still going to have the problem with criminals not wanting to have a record of their transaction through bank-to-bank transfers or electronic wire use. People are going to be carrying the currency as they do now.

The only difference is that the Customs Service will be able to stop them if they receive information they are about to depart the United

States to use the money in a criminal activity, whereas right now we need probable cause—or warrants under certain circumstances.

Mr. GIBBONS. If you are going to start monitoring, they will put it through the bank.

Mr. NICKERSON. They are reluctant to do so. They create a paper trail, as Mr. Seidel pointed out.

Mr. GIBBONS. You are not monitoring, so what difference does it make?

Mr. STANKEY. Mr. Chairman, if I may offer a comment. As the Deputy Assistant Secretary pointed out, crime is a cash business and the drug traffic and other forms of illegal activity generate large amounts of currency which must be recycled into the banking system.

The Bank Secrecy Act has a variety of reporting requirements. In addition to the reporting of the international transportation of currency, there is a domestic reporting requirement where domestic banks must report when individuals take in more than $10,000 in currency.

So, that requirement would generate a report by the bank in the event a drug trafficker chose to transfer the money out through normal banking channels rather than carry it out of the country physically. Those reports, all of the reports, are being monitored and analyzed at this time.

Mr. GIBBONS. I don't know much about drug trafficking, except I read it as a very serious problem. I know criminal prosecutors tell me it is a very serious problem. I would imagine that in this kind of deal you don't pay cash until the stuff is delivered. It looks like nobody is going to trust anybody. I would imagine that the delivery of the goods and the delivery of the cash probably take place at the same time. Am I wrong in that?

Mr. NICKERSON. I think there are a variety of methods by which these transactions take place. Some of them, as you said, are direct transfers at the time of sale. There are also instances where front money has to be offered in order to guarantee that narcotics be delivered into this country.

In that case, it would be a matter of going down prior to the actual shipment of any narcotic and depositing a certain amount of money with the trafficker. The number of scenarios, the number of factors in this equation are innumerable and represent different forms and schemes.

Mr. GIBBONS. To put a quantum basis on it, by what amount of additional arrest or cutting of the supply of illegal drugs do you feel that you are going to increase your law enforcement capability by using reasonable cause rather than probable cause to make a search?

Mr. NICKERSON. I am hesitant to offer a percentage, Mr. Chairman. What I can point to is the fact that in the southern district of Florida we have two cases where we lost the case because we did not have the standard of reasonable cause to suspect. I can point to the fact that it has a chilling effect on U.S. Customs Service in pursuing matters where they do not meet the probable cause standard.

The third thing I can offer is that you have to look at this one issue, reasonable cause, not independently, but in light of the entire package. I think what you have here is an effective law enforcement package which Mr. LaFalce offered and we support.

That package, in total, we think will have a significant effect on the ease with which couriers today now export large amounts of currency. As I pointed out earlier, we only can identify approximately $46 million that have gone into drug producing nations.

I would suggest to you that that figure is terribly low and that, on a daily basis, people are leaving various airports within the United States carrying cash in violation of the current statute——

Mr. GIBBONS. You do not know then how much switching from probable cause to reasonable cause would increase your law enforcement effectiveness? Is that your testimony?

Mr. NICKERSON. I know it will increase it. I think you are asking me for hard numbers.

Mr. GIBBONS. Sure; this is a hard job we are in. What is so different about law enforcement in this area than any other law enforcement in the United States?

Mr. NICKERSON. There isn't. I am hard pressed to give you a hard figure and come 10 percent beneath or 10 percent above. No doubt when you start offering up to $250,000 for an informant to come forward and report on the illicit couriering of money, no doubt when you have a search standard which is more preferable to the Customs Service than the current one——

Mr. GIBBONS. I tell you, I am very skeptical about informant money. I think half of it goes into the pockets of the person passing the money out, or at least that much. That has been my experience. Not in this type of law enforcement, but in other matters.

I think that is one way that we get the skimming that we are not really proud of.

Mr. NICKERSON. I agree with you, Mr. Chairman. I think there are times when law enforcement officers have to deal with individuals that they would prefer not to deal with. However, this is a real world and, unfortunately, sometimes we must rely heavily on the information that these people are willing to profer in a situation like this.

I have a special assistant here who is very energetic and optimistic. He says to tell you that we could show 100-percent improvement in terms of what we are currently doing in terms of outward bound currency.

Mr. SEIDEL. Mr. Chairman, on the informer's award, the proposal in H.R. 5961 would only permit a payment after the Treasury Department has recovered a sum of money in excess of $50,000. To that extent, the money that the Treasury Department will be making will be covered upfront before the informant is paid.

The way the bill is written, the informant is only entitled to payment if the Government exceeds the $50,000 collection and then he is entitled to up to 25 percent, not to exceed $250,000, of what the Government has recovered. So, he will not get anything unless the Government makes a recovery.

Mr. GIBBONS. That is an improvement over the typical informant. I commend you for that. I don't even smoke cigarettes or anything like that and I am against all of these drugs. I am also very wary of changing the standards of law on these matters. I impugn nobody's motives. We have a long history of this in the United States, one of the most fundamental things we have.

I certainly do not want to put any tougher test on law enforcement officers than the constitutional tests that are now there. I want to make sure when I do change the law I know why I am changing it and how I am changing it and what I am going to get for it.

Mr. NICKERSON. I understand that. I think the Banking Committee built in an 18-month report that will require us to demonstrate the efficacy or effectiveness of the law. I think the other thing to keep in mind is the very unusual circumstances that surround this as opposed to other areas. For example, you have people departing an airport. They are walking into it. Within 30 minutes to an hour, they are going to be in an airplane.

They will be flying out of the United States. Courts have said they have not committed a crime until that airplane has actually departed, therefore, putting this individual beyond our jurisdiction. This is a unique set of circumstances.

If we want to get tough with drugs, if we want to get tough other than just talking about how bad the situation is, how awful it is and reading reports in the Miami Herald and other Florida newspapers as well as the Post, et cetera, et cetera, then we have to be willing to come forward and try to deal with this matter.

I suggest to you that Mr. LaFalce's proposition is the way to deal with this matter, one of the tools we need to deal with it.

Mr. GIBBONS. I think you are changing the law to "attempt" as a first step. I think you are changing the law on payment to informants although I am skeptical of most of that informant material based on my own past experiences in trying cases, both prosecuting and defending. I am skeptical of informants' testimony.

What happens to the money? I worry deeply about changing probable cause and reasonable cause and I will continue to study what you have here and listen to Mr. LaFalce's details and listen to the other witnesses and hope you will be back whenever we have this matter up.

When we put this bill out of here, if we do, I imagine we will know exactly what has to be done. I would think you had better think very hard about how much additional law enforcement results you are going to get from going from a probable cause to a reasonable cause standard.

Mr. NICKERSON. If this bill passes I think you will be very happy with the statistics that we will report back to you a year from now.

Mr. GIBBONS. I certainly hope so. Thank you very much.

[The following was subsequently received:]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., April 15, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Ways and Means Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On Thursday, April 17, 1980, the Subcommittee on Trade will again consider H.R. 5961, the Currency and Foreign Transactions Reporting Act. As you will recall, we have contacted you on several occasions in support of this legislation.

H.R. 5961 was introduced at our request by Congressman John LaFalce (D-NY) and 30-plus sponsors. Incidentally, Mr. Chairman, I pointed out the necessity for this legislation while Congressman LaFalce and I were visiting with U.S. Ambassador Diego Asencio in Bogotá, Colombia. As you know, Ambassador Asencio is still held captive by the M-19 Group in the Dominican embassy in

Bogotá. During that meeting, I suggested that one of the obstacles, the Currency and Foreign Transactions Reporting Act, was providing unintended protection for those who are involved in drug trafficking, organized and white collar crime. We at the Customs Service and in the Treasury Department firmly believe that the Federal law enforcement community urgently needs the passage of this bill.

The opposition has had ample opportunity to be heard on the merits of this legislation. Public hearings were held by the Subcommittee on General Oversight and Renegotiation, the Subcommittee on Financial Institutions, and the full Banking, Finance and Urban Affairs Committee on two occasions. The issues were thoroughly debated by its members. We agreed to accept two amendments and a crippling amendment offered by Congressman Ron Paul was defeated 33 to 4.

Since so much erroneous information has been circulated on H.R. 5961, we have taken the liberty of attaching several questions and other material that may help the Subcommittee clarify some issues from the witnesses scheduled on April 17. Again, this legislation has been thoroughly reviewed by the Administration, and they support all of its provisions.

Sincerely,

WILLIAM C. BYRD,
Deputy Congressional Liaison Officer.

Attachments.

Congressman Ron Paul circulated a letter dated March 3, 1980, to the members of the House of Representatives which raised several arguments against passage of H.R. 5961—amending the Currency and Foreign Transactions Reporting Act. Because of the confusion and misinformation surrounding this bill, a brief review of Dr. Paul's charges is in order.

Dr. Paul labels H.R. 5961 a "money control bill". This is incorrect. Neither the bill nor the Act which it amends can affect, alter, prohibit or discourage any currency transaction. The bill does not substantively change the purpose of the Act which requires recordkeeping and reporting of certain currency transactions that, ten years ago, Congress found to have a high degee of usefulness in criminal, tax and regulatory investigations. Recordkeeping only serves to protect innocent transactions.

Dr. Paul warns that the bill would give statutory authority to conduct warrantless searches of persons and things leaving the country and that no such authority currently exists. This is incorrect. Anyone who has ever flown out of this country can bear witness to the exercise of such a search authority when passengers are searched for weapons. More importantly, the courts have recognized that warrantless Customs border searches are equally valid for travelers entering as well as leaving the country. *United States* v. *Ajlouny*, 476 F. Supp. 995 (1979); *United States* v. *Swarovski*, 592 F. 2d 131 (1979); *United States* v. *Asbury*, 586 F. 2d 973 (1978); *United States* v. *Stanley*, 545 F. 2d 661 (1976), (cert. denied), 436 U.S. 917 (1978). Congressionally mandated export control measures would be unenforceable without such authority. See, e.g., 22 U.S.C. 401 (illegal exportation of war materials), 22 U.S.C. 1934 (munitions control), and 22 U.S.C. 2778 (control of arms exports and imports). Even so, one should ask what is so qualitatively different about searching travelers when they leave the country as opposed to when they arrive? Warrantless searches which meet the Fourth Amendment's reasonableness requirement are presently conducted by Customs officers on incoming travelers. Merely because the Congress and the Customs Service have not been as interested, up until now, in conducting searches on outgoing travelers does not make that examination somehow less constitutional.

Dr. Paul claims that H.R. 5961 violates the Constitution because it would cause currency to be treated as contraband. This is incorrect. If a Customs officer had a "reasonable cause to suspect", he could search for unreported currency to the same degree he could search for dutiable or undeclared merchandise as well as contraband; there, the similarity ends. Contraband is prohibited on its face. Currency clearly is not. The transportation of monetary instruments is an inherently innocent action. However, Congress has seen fit to declare that the exportation of monetary instruments worth more than $5,000 must be reported. (H.R. 5961 will change this figure to $10,000). Currency is not illegal, but the refusal to report currency is. The question then becomes, if a border search for currency passes the same Fourth Amendment test other border searches must face—reasonable cause to suspect—how can H.R. 5961 be said to violate the Constitution?

Dr. Paul goes on to assert that the Act's delegation of power to define "monetary instruments" and the bill's delegation of power to define "attempt" will invite abuse by the Executive. This is incorrect. The Act never gave the Secretary the authority to define "monetary instruments". Monetary instruments are defined by statute. The Secretary was only given the discretion to eliminate whatever monetary instruments he saw fit from coverage under the Act. The bill, H.R. 5961, does not give the Secretary the authority to define "attempt". Attempt is a well articulated term defined by the courts. As to the future abuse of power, no one can refute the potential. However, past practice is a strong indicator. Has the Secretary of the Treasury abused his authority to apply the Act to a particular "monetary instrument" over the past ten years? Notwithstanding past practice, why would the courts be incapable of preventing this abuse? Since H.R. 5961 requires the Secretary to report back to the Congress within 18 months after the effective date of the amendments, why would Congress be incapable of preventing this abuse?

Finally, Dr. Paul asserts that the public, once informed about the bill, opposes it. On the contrary, the Treasury Department's experience with both the bill and the Act indicates that the public, once informed, does not oppose the bill. The Customs Service works constantly to keep the public informed; a sample of one of the many Customs information flyers explaining the Currency and Foreign Transactions Reporting Act is attached.

Currency Reporting

There is no limitation in terms of total amount of monetary instruments which may be brought into or taken out of the United States, nor is it illegal to do so. However, if you transport or cause to be transported (including by mail or other means), more than $5,000 in monetary instruments on any occasion into or out of the United States, or if you receive more than that amount, you must file a report (Customs Form 4790) with U.S. Customs.

Monetary instruments include U.S. or foreign coin, currency, travelers checks, money orders, and negotiable instruments or investment securities in bearer form.

Reporting is required under the Currency and Foreign Transactions Reporting Act of 1970 (Public Law 91-508, 31 U.S.C. 1101, et seq.). Failure to comply can result in civil and criminal penalties.

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Customs Publication No. 503 (English) 1979

**Write to Regional Commissioner of Customs*

Mr. GIBBONS. The last bill is Mr. Rodino's bill, H.R. 6394.

Mr. MERKIN. I would like to ask Mr. David Cohen from the Justice Department to address this bill.

STATEMENT OF DAVID M. COHEN, COMMERCIAL LITIGATION BRANCH, U.S. DEPARTMENT OF JUSTICE; ACCOMPANIED BY RICHARD ABBEY, CHIEF COUNSEL, U.S. CUSTOMS SERVICE

Mr. COHEN. With me is Richard Abbey, who is Chief Counsel of the U.S. Customs Service.

The administration generally supports H.R. 6394. There are only three principal possible areas of objection. One is our concern over proposed 1581(j)(2) of the bill, which would enlarge the opportunity for obtaining judicial review of Customs Service rulings. We are concerned that the provision as now written is too broad.

The second area concerns the grant to the Customs Court, or the new Court of International Trade, as it will be called under this bill, of original jurisdiction over penalty actions instituted under section 592 of the Tariff Act of 1930.

The third area of possible concern deals with proposed section 1581(f) of the bill which would grant the Court of International Trade the authority to review decisions to certify businesses, firms or communities or employees for adjustment assistance.

The question of the administration's position on this particular provision of the bill is now under very serious consideration.

With the exemption of those principal problems, unless Mr. Abbey has anything else he would like to add, the administration supports H.R. 6394.

Mr. GIBBONS. I want to tell you I am not very familiar with the bill and what it does. The staff has prepared some questions here. The staff has prepared a number of questions on all of these bills and I will direct the staff to file those questions with you, Mr. Cohen, and then give you a reasonable amount of time to respond to them because they go into great detail on some of the bills we went through very hurriedly this morning.

With regard to the proposed section 1581(d), which provides for judicial review of certain advisory actions of the ITC and the U.S. Trade Representative, what remedy can the court grant if a procedural irregularity is found?

Mr. COHEN. I think, Mr. Chairman, that the court could say that there was a procedural irregularity that occurred in formulating the advice of the International Trade Commission to the President.

However, the court could also hold that it would be too disruptive to hold the ultimate decision of the President taken on the basis of that advice invalid immediately.

So what the court could do would be to allow the President's determination to remain in effect, to remand the matter to the International Trade Commission to follow the proper procedures and then to request the President to reconsider his decision on the basis of the findings of the International Trade Commission after it has complied with the proper procedures.

The President's decision might not change but if it did change, then presumably he would change his original order.

Mr. GIBBONS. Then you could order a rehearing. Even if the rehearing were conducted and the procedure were followed, the President could say "OK, I do not want to follow it." Is that right?

Mr. COHEN. That is correct. The fact that the result could turn out to be the same after a remand is always true in a case in which the court remands the matter to an agency to reconsider a matter which it had originally decided upon the basis of a proceeding in which it had committed some procedural defect.

The purpose of this section of the bill is twofold I think. One is to enhance the opportunity for judicial review of these kinds of actions. At the same time, the bill has to be carefully drawn, to avoid adversely affecting the article III status of the court. By granting it, in effect, the power to render advisory opinions. We do not want to do that. That is why the bill is drafted so as to provide for judicial review to occur after the President's decision becomes final.

A second problem to avoid in this area where the agency is rendering advice to the President, rather than making a determination which automatically in and of itself has an effect, is to prevent the court from delivering into the substance of the agency's determination.

What you want to assure, however, and this is the purpose of the provision in the bill, is that the agency follows the procedures set forth by Congress in formulating its advice so that all interested parties are accorded those procedural rights that are provided by statute.

That is what the bill is intended to do, to give persons who are adversely affected the opportunity to obtain court enforcement of procedural rights granted to them by the various statutes involved.

Mr. GIBBONS. Could the court enjoin Presidential action pending its review of the procedural aspect of the USTR's advice?

Mr. COHEN. Under the bill as it now stands there would be nothing to prohibit the court from doing that. There is nothing in reality to prohibit any district court from taking similar actions in similar types of cases. However just as it is in the case in the district court, such action would be so extraordinary that I think it could be safely assumed that the court would not take such action unless the procedural violation were so egregious that the action of the President simply could not stand.

We have had cases in the district courts involving oil import fees, for example, in which the courts have enjoined the President from imposing oil import fees. This was the *Algonquin* case a few years ago. So, the power does currently exist in the district courts.

I do not think this power would be exercised any differently by the Court of International Trade than the same powers are currently exercised by the district courts.

Mr. GIBBONS. If the procedural irregularity does not change the final outcome of the proceedings, does this not involve unnecessary waste of resources and personnel?

Mr. COHEN. Not to the extent that the court by deciding the case has established a principle for the future which notifies the agency as to the correct procedures which must be followed in this area. Many of the statutes that are specified in the bill do provide for procedural rights.

Under the current law, however, there does not appear to be any way in which to enforce those rights by means of a court action. Perhaps the bill is inartfully drafted but the intent is simply to provide a right for people to obtain judicial enforcement of rights which they cannot now obtain, at the same time taking care not to disturb the article III status of the court or to give the court carte blanche to consider the substance of these decisions.

Mr. GIBBONS. In confining its review to the question of procedural irregularity, will the court judge the action of the agency solely against the procedure required by statute? If so, what standard is to be used in cases arising under section 338 of the Tariff Act which contains no procedural provision?

Mr. COHEN. I think in those circumstances the court would fashion what it would consider to be the appropriate procedure. It might well be that the court would say the mere fact that Congress did not specify a procedure means that whatever procedure the plaintiff received was sufficient and that the listing in this section of section 338 is merely an attempt to achieve completeness.

But it is foreseeable that the court might say, "Well, all these other procedural rights are specified by statute. Congress did not specify any procedural rights in this particular statute. Since Congress knew how to specify procedural rights when it wished to do so, it can be assumed that the absence of specified procedural rights means that Congress did not intend to avoid procedural rights with respect to this particular statute. That could be a conceivable outcome of the case.

Mr. GIBBONS. Does this statute require that the court judge the action of the agency solely against the procedures required by the statute?

Mr. COHEN. The statute does not do that in so many terms. It is also conceivable that the court could fashion or decide that there are certain fundamental procedures which are essential to fairness and that those should be accorded individuals even if——

Mr. GIBBONS. Even if the court writes the procedural laws instead of Congress writing procedural laws relative to the powers of the court, that is what worries me.

Mr. COHEN. I think it would be possible in this bill, assuming that it was not intended to eliminate section (d)(1) altogether, it would be possible to so phrase the bill as to provide that the only procedures shall be those specified in the substantive statutes and that the court shall not go beyond those.

Mr. GIBBONS. What is wrong with that?

Mr. COHEN. There is no substantive problem with that. It is just that the products do vary somewhat from statute to statute. I think a simple sentence could be added to the effect that, in determining the procedural regularity, the court shall enforce only those procedures set forth in the statute specified.

Mr. GIBBONS. At least the litigants who go into court know what the rules are. They know where to come to get a change and not go shopping around to different jurisdictions to find a judge that may lean that way.

Mr. COHEN. That is correct.

Mr. GIBBONS. Maybe you ought to put that in there before we get the bill out of the committee. I suggest that you prepare an amendment

to make sure that we pin that subject matter down a little more thoroughly.

Are there further questions?

We have some more questions in here that have been propounded by the staff. We will submit those to you and ask you to submit your response in writing.

Mr. COHEN. We will be glad to do that.

Mr. GIBBONS. This completes our agenda of administration witnesses. Mr. LaFalce, do you want to be heard at this time?

Mr. MOORE. Are the administration witnesses going to be dismissed?

Mr. GIBBONS. Well, they won't go too far.

H.R. 5132

There was a bill they touch on that I introduced that I want to ask certain questions on. It is H.R. 5132, gentlemen, to amend the Tariff Act of 1938 to exempt from the definition of vessels non-self-propelled barges under certain conditions.

It is my understanding from the staff you are in opposition to the bill.

Mr. MERKIN. Yes.

Mr. GIBBONS. I am not sure I am in favor of it. There has been a problem that has developed that I am trying to find a way to solve. Do you have knowledge and do you acknowledge that there is a problem that when one of these lash barges we are talking about, that is on board one of the American ships that is overseas and something happens to that container, that barge, it is no longer seaworthy, something has to be done to it in a foreign port before it can be returned or be used for a return trip to the United States.

The way the law is written now whatever you do in a foreign port of an emergency nature would be subject to the 50-percent tariff.

Mr. COMISKEY. No; my understanding is that under current law if the owner of the lash vessel can show it was an emergency repair, it would not be subject to the 50-percent duty. The bill, as drafted, would change the situation such that any repair made overseas for any reason would——

Mr. GIBBONS. It is our understanding that under the existing law a manned vessel under your rules and regulations is implementing section 1466, 19 U.S.C. 1466, that there is no question that the vessel where a master certifies that the vessel has emergency repairs is not subject to it. But, this same rule has not been applied toward the barges that the vessel may be carrying and that they are subject to it.

We are not attempting to change the law to say no matter what they do. We are attempting to clarify the law to be sure that the barge gets the same treatment as the vessel. So, I understand that really your office could, by regulation, clarify that. I am told that the decision has been pending for some time in your office to declare whether the same rule applies to a lash barge, floating container, or a vessel in foreign commerce of the United States.

If it is defined as the latter, a vessel, then it comes under existing law and we have no problems. But, your failure to define it or possibility to define it as a container causes a problem. That is what I am trying to get straight.

Mr. MERKIN. If I may, I am not sure if the gentleman from the Maritime Administration is still here, we can let him address this question.

STATEMENT OF ROBERT GARSKE, MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. GARSKE. My name is Robert Garske. I am with the Maritime Administration in the Department of Commerce. I would first like to observe that this law is not administered by the Department of Commerce.

Mr. MOORE. It is administered by the Customs Service?

Mr. GARSKE. Yes; further, the lash barges and sea barges also are considered to be vessels by the Department of the Treasury. I assume that is the issue you are talking about. The ruling would, as I understand it, decide that such a craft would no longer be a vessel for the purpose of this statute.

The Department of Commerce, on the basis that presently these are vessels and do function as vessels during at least a portion of their use, considers they should be treated in the same way as other vessels under the law of the United States.

Mr. MOORE. You see no distinction in a lash barge and a vessel, and lash barges can use the emergency repairs overseas section of the law and not pay a duty on the repairs, is that right?

Mr. GARSKE. Yes.

Mr. MOORE. That is the law now?

Mr. GARSKE. That is presently the law. The practice problem, to the extent that I am aware of it is that the owners and operators of these particular barges find it more difficult to estabilsh the emergency nature of the situation. That is the problem.

Mr. MOORE. The master is not with them all the time as he is with the mother ship?

Mr. GARSKE. Yes.

Mr. MOORE. I get conflicting reports from people in the industry. Thank you.

Those are all the questions I have, Mr. Chairman.

Mr. GIBBONS. You will be around in case we have any more questions I assume.

H.R. 5961

Mr. LaFalce, will you come forward to testify in support of your bill, H.R. 5961? I am sorry I misunderstood the signals. I thought you wanted to come back the same day we had the other members who also want to be heard on this bill.

Let me assure you, and I am sure I am speaking for the chairman and the rest of the committee, we want to dispose of this matter in a rapid but judicious manner. We will be glad to hear from you. I know it is a tough area. You may proceed. I recognize your expertise in the area of law, Mr. LaFalce. I realize you have tackled a tough area.

STATEMENT OF HON. JOHN LaFALCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LaFALCE. Thank you very much, Mr. Chairman and members of the committee. I appreciate very much the opportunity to come before you. I haven't any written remarks that I want to present to this committee, but I do want to make some general off-the-cuff comments.

First of all, I am very, very concerned about constitutional rights, and always have been from the first day I became interested in the law and my days in the practice of law. Last year I am pleased to say as a member of the Banking Committee, I was one of the two primary authors along with Mr. Cavanaugh of the right to privacy legislation that we were able to get passed in October of 1978.

Consequently I am aware of the appropriate balance that must exist between individual rights and that order in society which requires legitimate law enforcement activities by our law enforcement agencies.

I believe, however, that there presently exists an imbalance in that relationship between individuals' rights and the rights of all society to prosecute and to seek out criminals. What I am attempting to do is to right that wrong; to address the imbalance. How have I attempted to do it and why have I attempted to do it?

The why is obvious. Drugs have become an unbelievable problem within the United States of America. They have become a tremendous problem in my congressional district which borders Canada. I believe they have become a serious problem in most congressional districts in the United States; especially I believe they are serious within the State of Florida.

In January of 1979 President Carter gave a state of the Union address and in that state of the Union address, he said henceforth we will stress financial investigations as a primary means of combating international organized crime. Understand that it is this problem we are addressing ourselves to. We are not talking about the kid in the street smoking marihuana. We are talking about international organized crime.

What is necessary in order to combat that? A package approach, at least, a package approach embodied in my bill which I first introduced as three separate bills because I wanted to get the full support of the administration. I thought I will introduce three separate bills and let us see if we can support for all three. If we can, then we will embody them in one bill.

Not only did I receive their support, but I received their enthusiastic cooperation in pushing it. Now, Mr. Chairman, you asked the question how much will this improve the effectiveness of our law enforcement agencies? That is a difficult question to answer. You said we have a difficult job in passing legislation and it deserves an answer.

Let me try to give you both a quantitative and qualitative answer. Quantitatively you heard from the adviser to the Treasury Department for Financial Crimes, the charge of the IRS, Customs, foreign reporting, et cetera, Robert Stankey. He says in his judgment it would improve the effectiveness 100 percent.

In previous testimony and in letters the Customs Department has said qualitatively that this package would be a potent weapon, that it is urgently needed. Those are the exact words. The Drug Enforcement Agency has said qualitatively that this would greatly improve, not slightly improve, not a modest ability to fight crime better, but it would greatly improve our law enforcement activities.

Let us go into some of the specifics. When I first introduced this bill we did have some individuals oppose it. Civil libertarians such as Representative Paul, Representative Larry McDonald, Representative Steve Symms, Representative George Hansen. What was the gist of their opposition?

Well, first of all, they said this would impose additional reporting requirements. That is blatantly false. The fact of the matter is that there are absolutely no additional reporting requirements whatsoever. Indeed, there are fewer reporting requirements.

The present reporting requirement which has existed since 1970 is for $5,000. This bill would increase that to $10,000, thereby lessening the reporting requirement, not increasing them.

Second, they say, "It is wrong to make it a crime to attempt to do something." It is wrong that we don't have an attempted action as a crime because virtually everything else, attempted burglary, attempted robbery, attempted murder, is a crime.

It is only because of an omission within the law and judicial interpretation of that omission that we have a glaring loophole. That is title I.

Let me skip to title III. Title III is the informant's fee. Again, we have tried to draft title III carefully to absolutely require first a fine or a penalty or a forfeiture before the Secretary has any authority to do anything. Then, once there is a fine or a penalty or a forfeiture, it must be in the amount of $50,000 before the Secretary has authority.

Once you have collected that $50,000, then the Secretary has discretionary authority. He does not have to award the informant, it is still discretionary depending on the circumstances. However, in the exercise of his discretionary authority, he has certain limitations imposed on him beyond which he cannot go. That is, he cannot give the award even if he wanted to for more than 25 percent or $250,000 whichever is lesser. He need not have given one penny if the circumstances don't warrant it.

If he is going to give an award, the money still has to be in hand first. I think the language is carefully drafted. I think it is wise. The whole issue of an informant's fee is a general subject for debate, but we have informant's fee for virtually every other type of crime.

Such fees are a necessary adjunct to federal law enforcement especially when we are concerned with international organized crime. We are talking about individuals who would quickly rub an individual out. Nobody is going to inform law enforcement officers of a $2 million or $20 million amount with an international organized crime element if there is not some reward that they can expect to receive.

I think both title I and title III are clearly justified. What about title II which would permit a search at the borders under exigent circumstances on reasonable cause to suspect? What you have to understand it seems to me is that our customs officers presently have that authority. Customs officers presently have the authority to search individuals leaving the United States at our borders for reasonable cause to suspect, not probable cause.

But, only if it is reasonable cause to suspect contraband or merchandise. So, if the customs officers believe there is reasonable cause to suspect for drugs that are leaving the United States, they can search. If, however, they have reasonable cause to suspect that an individual is leaving the United States with money illegally obtained through the sale of drugs, they cannot.

Why? Because the Constitution says they cannot? No, the Constitution does not distinguish between the customs officer's ability to make a search on the grounds for which he is making a search distinguishing between merchandise and currency. It is the vague Secrecy Act, the 1970 law, which probably, through oversight and omission committed a glaring loophole and said customs officers must have probable cause.

Our customs officials right now only need to have reasonable cause to search merchandise for contraband. All we are saying is, remove this loophole in the 1970 law which has put one hand behind the back of the customs officer, a hand behind the back not called for by the U.S. Constitution, when he is attempting to fight international organized crime.

Mr. Chairman, the passage of this bill is the least we can do in our battle against international organized crime. It is the least we can do to effect the intent of President Carter as articulated in his January 1, 1979, state of the Union address. The least we can do is to take one hand from behind the back of the customs officials in the United States.

Thank you.

Mr. GIBBONS. Mr. LaFalce, I appreciate your very learned and very strong testimony. You have removed a lot of the doubts I had about some sections of this bill. As I say, there are parts of it particularly attempting to commit a crime, and your testimony elicited today has drawn very carefully the problem of handling informants.

What, in effect, you are doing is making money contraband?

Mr. LAFALCE. Illegally obtained money.

Mr. GIBBONS. Illegally obtained money is contraband?

Mr. SEIDEL. Unreported.

Mr. GIBBONS. It could be illegally obtained?

Mr. SEIDEL. But, unreported, yes.

Mr. GIBBONS. There is no danger of my taking $10,000 out unless I robbed a bank.

Mr. LAFALCE. I would also note there are exceptions to the reporting requirements under the 1970 law and under the regulations promulgated pursuant to the 1970 law. None of that would change except this bill would increase the $5,000 to $10,000, thereby lessening the reporting requirements.

Mr. GIBBONS. Are there further questions?

Thank you, sir. Good testimony. Well done.

Mr. Vanik is going to assume the Chair now and conduct the rest of this hearing. As soon as I can get some nourishment, I will be back up to help him. We start now at the top of the list.

Mr. VANIK. Thank you very much, Mr. Gibbons. I am going to ask that all witnesses who are testifying on this legislation please summarize your statements. We have a long extended list of witnesses. Mr. Gibbons, you will be back.

Our intention will be to proceed right through the list as scheduled so that anybody who is at the end of the list might have lunch first and

then come back. But, our intention is to go on through with the business until it is completed this afternoon.

H.R. 5047

Mr. VANIK. The first bill is Mr. Frenzel's bill, H.R. 5047. We have as a witness Mr. Edwin DuBose, vice president of the Photographic Products Division, along with Philip Yale Simons. I wonder if Mr. Simons, counsel for Agfa-Gevaert might be available.

We will be happy to hear from you, Mr. DuBose. Your entire statement will be in the record as submitted. You may read from it or excerpt from it, whichever you desire.

STATEMENT OF EDWIN A. DuBOSE, VICE PRESIDENT, PHOTOGRAPHIC PRODUCTS DIVISION, MINNESOTA MINING & MANUFACTURING CO., ST. PAUL, MINN.

Mr. DUBOSE. Thank you very much for the opportunity to be here today. I am here to respectfully request continuation of duty free entry of color couplers. Color couplers are dye formers used to produce color paper and amateur color film. These organic chemicals are manufactured in the United States, but are not commercially available.

These color couplers were originally manufactured in our Italian subsidiary and imported to the United States. Since we received duty free status in 1977, we have spent $1.6 million to build a plant and are now producing two out of three couplers required for color paper. We are scaling up the third coupler and now plan to coat amateur color film in the United States before 1982.

The manufacture of amateur film and color paper couplers will employ approximately 300 highly skilled technical people. This continuation of duty free status will permit 3M to compete more effectively with substantial imports from Japan and Germany.

I respectively request you give favorable consideration to our request.

[The prepared statement follows:]

STATEMENT OF EDWIN A. DUBOSE, VICE PRESIDENT, PHOTOGRAPHIC PRODUCTS DIVISION, MINNESOTA MINING & MANUFACTURING CO.

Mr. Chairman and members of the Committee, I am appearing in support of H.R. 5047 which proposes to continue the duty free entry afforded color couplers and coupler intermediates under Items 907.10 and 907.12 as an appendix to the Tariff Schedules of the United States (T.S.U.S.). (See Appendix I.) T.S.U.S. Items 907.10 and 907.12 became effective December 12, 1977 and will terminate June 30, 1980 (Public Law 95-206).

We would like to request continuation of the duty free status until June 30, 1982. Color couplers and intermediates are still not completely available domestically. While we are in the process of completing manufacturing facilities at Rochester, N.Y. (85 percent complete), we will still find it necessary to import. This relief in production costs will also allow us to remain reasonably competitive in the color print paper market (domestic and severe import competition).

Color intermediates are organic chemical compounds which are used in the production of color couplers. A color coupler is a more advanced organic compound which is incorporated into photographically sensitized material and which reacts chemically with oxidized color developers to form a dye. Color couplers are used to make color photographic paper and color amateur film.

In late 1972, 3M entered the U.S. Color Print Paper market with manufacturing facilities located at Rochester, N.Y. Color couplers, essential to the manufacture of color print paper are critical to 3M. Prior to market entry, 3M searched

the U.S. market for couplers and found two producers; Eastman Kodak and G.A.F., both of whom manufacture for their own use and not for resale.

As an alternative, 3M asked its Italian subsidiary (a major European photographic film manufacturer purchased by 3M in 1964) to develop and produce the required couplers. This was accomplished and 3M began importing color couplers in 1972.

In early 1973, high cost, an excessive duty rate (3 cents per pound plus 19 percent Ad Valorem) and continued unavailability in the U.S. market prompted 3M to initiate plans for a U.S. facility to produce color couplers. The recession and uncertain economic conditions in 1974 postponed investment because of the significant capital required. The dramatic increase in low priced imports of finished color print paper also threatened the stability of this highly competitive market and again, continued to delay the investment commitment. As a result of Public Law 95-206 which provided duty free entry of color couplers and intermediates, 3M proceeded with the design and construction of production facilities in Rochester, N.Y.

Our stated reasons for temporary duty suspension were:

Color couplers and intermediates were not available in the U.S. domestic market The exorbitant 19 percent Ad Valorem plus 3¢ per pound rate of duty did not, therefore, protect a domestic industry.

Foreign competitors enjoyed a 5 percent rate of duty on color print paper. Imports of such paper had jumped dramatically.

A temporary suspension of duty on color couplers would allow 3M to more fairly compete against foreign imports of color print paper, and would permit significant capital investment required of 3M to construct a U.S. facility and employ additional U.S. labor in the production of color couplers.

We have since invested considerable monies in the design and construction of manufacturing facilities at Rochester, N.Y. We are manufacturing two of the three color couplers for color paper, namely Cyan and Magenta. By year end 1980, we will manufacture Yellow.

There are two major intermediates required in the final manufacture of color paper couplers—#1039 and #1032. By 1982 we will manufacture one of the two intermediates and continue to import the other. There are no U.S. producers of these intermediates. We plan to manufacture amateur color film in Rochester before 1982.

In the manufacture of color film, there are seven additional couplers required. None of these are available from U.S. sources. The couplers are: 2 Cyan, 2 Magnta, 1 Yellow, 1 Masking cyan, 1 Masking magenta.

We will begin to scale up the manufacture of some of these after 1982 but will continue to import from Italy until we are completely self sufficient at a later date.

Total effect will be an increase in employment of approximately 300 highly skilled permanent production workers. The manufacture of chemical and amateur color film will increase our exports to Canada, South American and the Western Pacific, now being supplied by our Italian subsidiary.

Your consideration of this request is respectfully requested.

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1980)

APPENDIX TO THE TARIFF SCHEDULES

Part 1.—Temporary Legislation

Item	Stat. suffix	Articles	Units of quantity	Rates of duty 1	Rates of duty 2	Effective period
907.10	1	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure (provided for in item 403.60, part 1B, schedule 4) to be used in the manufacture of photographic color couplers.....	1	Free.....	No change....	On or before 6/30/80.
907.12	1	Photographic color couplers (provided for in item 405.20, part 1C, schedule 4).....	1	Free.....	No change....	On or befor 6/30/80.

Mr. VANIK. Thank you very much.

Mr. FRENZEL. I want to thank the witness for his testimony. It is apparent there is no objection to this bill. The Treasury supports it. I think there is no need to go further with it. I yield the balance of my time.

Mr. VANIK. Thank you very much. There is no objection to your legislation. Treasury has no objection. We very much appreciate your statement.

Mr. Philip Simons.

STATEMENT OF PHILIP YALE SIMONS, ESQ., APPEARING ON BEHALF OF AGFA-GEVAERT, INC.

Mr. SIMONS. My name is Philip Yale Simons and I am an attorney associated with Freeman, Meade, Wasserman, & Schneider. I am appearing today on behalf of Agfa-Gevaert, Inc., of Teterboro, N.J. Agfa-Gevaert, Inc. imports and manufactures photographic products. I hold a Ph. D. in the physical sciences, and before commencing the practice of law, I spent almost 10 years conducting research in the photographic field for a major photoproducts manufacturer.

Our client favors the continuation of the present law which provides for the duty-free treatment of all "color couplers" and "color intermediates." The proposed legislation provides only for "color couplers used in the manufacture of photographic sensitized material," and this language defines color couplers more narrowly than the present law.

Therefore, while our client generally supports the proposed legislation, we believe that the proposed language should be corrected to insure that the bill will continue the existing duty-free treatment of all color couplers covered by tariff schedule item 907.12.

The term "color coupler" is a term of art in the photographic industry and describes those color-forming chemicals which react with certain other chemicals during the developing process. It is difficult, for purposes of my testimony today to explain the role of color couplers in color photography.

However, it is important to understand that color couplers can be either placed directly in the light sensitive layers of a photographic film—or paper—or placed in the processing solutions. For example, Ektachrome films contain color couplers in the film's light sensitive layers, while Kodachrome films use color couplers in the processing solutions. In both methods, the color couplers perform the same function, that is, they produce the "dye image."

At the present time, tariff schedule item 907.12 provides for the duty-free importation of all color couplers. On the other hand, the proposed legislation appears to provide only for those color couplers which are used in the "manufacture of photographic sensitized material." This will raise issues regarding what constitutes such use.

Thus, we urge the subcommittee to make it clear that the purpose of H.R. 5047 is to continue duty-free treatment on all color couplers, regardless of whether the color coupler is used in photographic film, paper or processing solution.

It should be mentioned that if the proposed legislation is enacted, the customs administration will be unduly complicated. The Customs

Service would be required not only to ascertain whether the imported chemical is a color coupler, but would also be required to ascertain in which system of color image formation the imported color coupler is used. Presently, the customs service need only ascertain whether the imported chemical is a color coupler.

Further, many domestic photoprocessors employ a photoprocessing and photofinishing system which uses processing solutions with imported color couplers. There is no domestic equivalent to this system. If the tariff treatment of color couplers is altered, many U.S. photoprocessors would face higher costs in this highly competitive field.

We suggest that the language of H.R. 5047 be modified. We respectfully request that the language of tariff schedule item 907.12 be retained and that proposed tariff schedule item 913.00 provide for "photographic color couplers."

One other point should be mentioned. The proposed legislation also provides for the duty free treatment of color intermediates imported for use in the manufacture of sensitized material. Basically, a "color intermediate" is a chemical compound which is used in the synthesis of a color coupler.

My comments with respect to color couplers apply equally to color intermediates. A separate tariff item for color intermediates is not required. They can continue to be provided for under the same tariff provision which describes color couplers. We suggest that the language of tariff schedule item 907.12 be modified to include both color couplers and color intermediates. We suggest the language "photographic color couplers and color intermediates."

We will provide a technical memorandum to the Commission's staff which will further explain the function of color couplers in photography and its relevance to the proposed amendment of the tariff schedules.

Thank you. Should you have any questions, I will attempt to answer them.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, I suspect that the gentleman is correct in suggesting his amendment. The language that he suggests does follow the existing suspension. I would like to ask if Treasury has any objection to the amendment suggested by the gentleman. They can supply the information for the record, and we will work that out. I think the gentleman makes a good point.

Mr. VANIK. Is there anyone from Treasury who would like to comment on it? We will have to get that later. Thank you very much.

Mr. Moore.

Mr. MOORE. No questions.

Mr. VANIK. Thank you very much.

H.R. 6089

The next bill is H.R. 6089, to prohibit until January 1 the conversion of the rate of duty on certain unwrought lead to an ad valorem equivalent. We have with us the lead consumers: Donald J. Priebe, manager, metal procurement and control, Gould, Inc., automotive battery division accompanied by Samuel Goldberg, vice president, Inco United States, Inc.; Bernard E. Kavanagh, metals coordinator, Globe Union, Inc.; Paul F. Piccone, director of materials, Exide

Corp.; John A. Peterson, vice president, director, materials management, Prestolite Battery Division; Max Turnipseed, manager, International Trade Affairs, Ethyl Corp; William P. Wilke IV, vice president, engineering and manufacturing, Hammond Lead Products, Inc.; and, Will E. Leonard, counsel.

STATEMENT OF DONALD J. PRIEBE, ON BEHALF OF THE AD HOC COMMITTEE OF LEAD CONSUMERS

Mr. PRIEBE. I am Donald J. Priebe, manager of metal procurement and control, Gould, Inc., automotive battery division, St. Paul, Minn.

Mr. Chairman, in the discussion that took place earlier on this bill with members of the administration a number of the points that we had intended to cover in our presentation were taken up, so we will make just a few brief points and then go on to questions, if the committee has any for us.

First of all, I would like to mention the members of our group, Ethyl Corp., Exide Corp., Globe Union, Inc. I am from Gould, Inc. Other members of our group are Hammond Lead Products, Inc., and Prestolite Battery Division of Allied Chemical Corp. In addition Robert Wilbur, who is an official of the Battery Council International, which is a part of the group, and who is here today, will speak.

We represent primarily the battery and gasoline additive industries which in turn represent some 70 percent of the lead consumed annually in the country.

We would like to mention first what has happened in the case of lead and what this bill seeks to remedy actually frustrates the whole intent of the MTN. The objectives originally were to cut tariffs and in this case the result was to increase them substantially. It seems to be a particularly good example of what makes people suspicious of their government's competence:

The government starts out attempting to do one thing and the direct opposite is the result. What is going on now is clearly inflationary. Depending on the price of lead it would add $20 to $30 million annually to inflation.

The President just last week asked us all to enlist in the war on inflation and at least lead consumers are willing to join up, but we are not sure of the lead producers at this point.

Our group has not been inflexible as far as working out this problem. We have offered alternatives. We have offered compromise. We still stand ready to enter into discussions with both the administration and the producers if that is possible to arrive at some compromise.

It is not our intention, obviously, to see the lead producers harmed. We need them badly. We can't prosper, indeed, we cannot survive without them. So we do need them and a strong and viable lead industry is essential to our business and the welfare of the entire Nation.

We certainly support that. As a consequence we urge a favorable report from this committee on H.R. 6089 and we are hopeful that the Senate and House will agree. I am not sure what other members of our group have comments now. If not, we will be prepared to respond to any questions that the committee may have.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF DONALD J. PRIEBE, ON BEHALF OF THE AD HOC COMMITTEE OF LEAD CONSUMERS

SUMMARY

The specific rate of duty on lead (TSUS 624.03) was converted to an ad valorem rate based on the average 1976 price of imported lead. Subsequent to that conversion process, unprecedented lead price increases have resulted in a substantial increase in the amount of duty on lead.

One of the important objectives of the MTN was to reduce, not dramatically increase, tariffs. But, the current 3.5 percent ad valorem rate on lead has increased the amount of the duty over 65 percent, at the current lead price of 50 cents per pound. We lead consuming industries and our customers, consumers of batteries, gasoline and other lead products, must pay this 65 percent duty increase in higher prices. We estimate the duty increase at today's price of lead will add about $21 million a year to the country's inflation.

We strongly urge that the Congress enact H.R. 6089, suspending until January 1, 1982, the current ad valorem rate of duty and returning to the previous specific rate of duty of 1.0625 cents per pound. If H.R. 6089 is enacted, the duty on unwrought lead during the next 2 years would not be any less than it has been over the past 28½ years. Enactment of the legislation will afford Congress and the Executive Branch time in which to decide what rate of duty will provide adequate protection to domestic lead producers, will not be unduly burdensome for lead consumers, will not adversely affect the U.S. economy, and will be consistent with U.S. international responsibilities.

STATEMENT

I am Donald J. Priebe, Manager, Metal Procurement and Control, Gould, Inc., Automotive Battery Division, St. Paul, Minnesota. This statement is submitted on behalf of an Ad Hoc Committee of Lead Consumers. Our Committee very much appreciates that a hearing has been scheduled so early in this session on H.R. 6089, a bill to prohibit until January 1, 1982, the conversion of the rates of duty on certain unwrought lead to ad valorem equivalents. We support and strongly urge that the Congress enact H.R. 6089.

Our Ad Hoc Committee of Lead Consumers includes six individual companies and the Battery Council International. All of the companies represented consume lead to manufacture batteries and gasoline additives. These two domestic lead consuming industries use over 70 percent of the lead annually consumed in the United States. The companies included in our Committee are:

Ethyl Corporation, 330 South Fourth Street, Richmond, Virginia 23219; Exide Corporation,[1] 5 Penn Center Plaza, Philadelphia, Pennsylvania 19103; Globe Union Inc., 5757 North Green Bay Avenue, Milwaukee, Wisconsin 53201; Gould Inc., Automotive Battery Division, Post Office Box 3140, St. Paul, Minnesota 55165; Hammond Lead Products, Inc., Post Office Box 308, Hammond, Indiana 43625; Prestolite Battery Division, an Eltra Company,[2] 511 Hamilton Street, Toledo, Ohio 43694.

Each of these companies is represented at the witness table. The representatives of the other member companies of our Committee are:

Mr. Max Turnipseed, Manager, International Trade Affairs, Ethyl Corporation; Mr. Samuel Goldberg, Vice President, Inco United States, Inc.;[3] Mr. Raymond J. Kenny, Vice President, Materials, Exide Corporation;[3] Mr. Paul F. Piccone, Director of Materials, Exide Corporation;[3] Mr. Bernard E. Kavanagh, Metals Coordinator, Globe Union, Inc.; Mr. William P. Wilke IV, Vice President, Engineering and Manufacturing, Hammond Lead Products, Inc.; and Mr. John A. Peterson, Vice President, Director of Materials Management, Prestolite Battery Division.[4]

Also present is Mr. Robert Wilbur, Director of Government Relations of the Battery Council International, who will also present a statement.

We are accompanied by our special trade counsel, Mr. Will E. Leonard, of the law firm of Busby, Rehm, and Leonard P.C.

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[1] Subsidiary of Inco Limited, Toronto, Canada.
[2] Subsidiary of Allied Chemical Corporation, Morristown, N.J.
[3] Subsidiary of Inco Limited, Toronto, Canada.
[4] Subsidiary of Allied Chemical Corporation, Morristown, N.J.

BACKGROUND

As part of the Tokyo Round of Multilateral Trade Negotiations (MTN), some 500 selected specific and compound rates of duty, including the specific rate of 1.0625 cents per pound on unwrought lead, Item 624.03 in the Tariff Schedules of the United States (TSUS), were converted to ad valorem rates. The Office of the Special Representative for Trade Negotiations (STR), upon the advice of the U.S. International Trade Commission, made the conversions in 1978, based primarily on trade data for 1976. The average price in 1976 for imported unwrought lead was 20.8 cents per pound. The approximate ad valorem equivalent of the 1.0625 cents per pound duty on 20.8 cents per pound lead was 5.1 percent. Therefore, 5.1 percent became the ad valorem rate of duty used by U.S. trade negotiators for purposes of negotiating a tariff concession on this item during the MTN.

In the MTN a concession was granted by the United States on unwrought lead, reducing the 5.1 percent rate to 4.0 percent. U.S.-Mexico bilateral negotiations resulted in a further concession on the item, reducing the 4.0 percent rate to 3.5 percent. That is the rate which became effective January 1, 1980, for TSUS Item 624.03.

THE PROBLEM

Although the 5.1 percent rate was reduced in the MTN to 3.5 percent, that 3.5 percent rate is at this time, with lead priced at 50 cents per pound, a 65 percent increase over the 1.0625 cents per pound duty on lead which had been in effect from June 6, 1951, to January 1, 1980. Five months ago, October, 1979, when the price of lead had risen to 61 cents per pound, the duty increase would have been 100 percent.

The reason why what at first would appear to be a tariff reduction on lead is really a huge tariff increase is that after the conversion of the specific rate to its ad valorem equivalent based on the value of imported lead in 1976, an explosion in the price of lead occurred, sending it to unprecedented highs. Of course, an ad valorem duty measured by the value or price of the imported merchandise results in a higher duty when the price of that merchandise rises.

LEAD PRICES AND AD VALOREM DUTIES

As the first of several exhibits attached to this statement shows, U.S. producer lead prices remained relatively stable in 1975 and 1976. They ranged between 19 and 25.8 cents per pound. In 1977 and until September of 1978, prices were between 26.9 and 33 cents per pound, but in September of 1978, the price began to rise at an unprecedented rate. It practically tripled from the 1976 average of 23 cents per pound to an average of 61 cents per pound in October, 1979.

From the specific rate of 1.0625 cents per pound which had been in effect, the duty on lead has risen to 1.75 cents per pound (3.5 percent of the current 50 cents per pound price for lead), a 65 percent increase. As recently as just five months ago, in October of 1979, when the price of lead averaged 61 cents per pound, the duty on lead at the new 3.5 percent ad valorem rate would have been 2.135 cents per pound. At that price level, the duty would have been increased more than 100 percent over what it was before January 1 of this year.

Exhibit I, page 1, reflects price changes and the producer average monthly prices for the most recent five years. Exhibit I, page 2, provides a history for the past five years and a forecast for the next five years of average annual producer and import prices.

A list of relevant ad valorem duty rates and the corresponding equivalent amount of duty expressed in cents per pound at lead prices ranging from 20–70 cents per pound is reflected in Exhibit II. Exhibit II reveals that, at the current ad valorem rate of 3.5 percent, any price exceeding 30.3572 cents per pound results in a duty greater than the previous specific rate of 1.0625 cents per pound. The prospect of lead prices falling to the 30 cents per pound range seems very unlikely based on the lead price forecasts shown on Exhibit I, page 2.

If the current increase in the amount of lead duty were not staggering enough, over the next decade the outlook is disaster. Lead prices, by the best forecasts available, are expected to stabilize in excess of 60 cents per pound early in this decade and rise to an average over 65 cents per pound by 1984.[5]

Gentlemen, the MTN had as an objective the reduction of tariffs. On lead, there has been a large increase in the tariff and that increase is destined to get even larger!

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[5] Chase Econometrics, Executive Summary Report, January 1980, "Metals Investment in the Eighties: Outlook Unsettled by Energy Risks," p. 17.

Although, in the MTN, the United States negotiated concessions on the lead duty, the fact that it began from a level of 5.1 percent causes the rate arrived at, 3.5 percent to still be too high. Regrettably, STR did not negotiate a reduction of the converted ad valorem rate to a level more equivalent to the previous specific duty rate of 1.0625 cents per pound. The authority to do so was there. Congress had given the President authority to reduce tariffs up to 60 percent, an authority which was exercised in many instances. In some instances the specific rate was not converted and the full 60 percent tariff-cutting authority was exercised. An example is TSUS Item 415.05. Its specific rate of duty prior to January 1, 1980, was 5 cents per pound. During the Tokyo Round, the 5 cents per pound specific rate was reduced to 2 cents per pound and the rate was not converted to an ad valorem.

EFFECTS OF DUTY INCREASE

This dramatic increase in the duty on imported lead means that those who buy lead, principally the battery, chemical, ammunition and pigment manufacturers in the United States, must pay more for the imported lead. And the United States must import lead, about 15 percent of U.S. consumption currently, because this country cannot produce enough lead to satisfy demand.

It is not just imported lead, however, which will cost more. Domestic producers of lead, if the past is any prologue, will increase the price of their product by the amount of the increase in duty of the imported lead. Thus, all lead purchased in the United States will reflect the higher price caused by the increased duty. The amount by which the new duty exceeds the 1.0625 cents per pound previously paid is the amount of the increase in the price of all lead consumed in the United States. That increase in the price of lead based on a current lead price of 50 cents per pound will be about $20,625,000 a year. Additional information and the estimated costs resulting from this duty increase are reflected in Exhibit III.

Those U.S. companies which purchase the higher priced lead will have to pass most of their increased purchase costs on to the ultimate consumers of their products. It hardly bears repeating that our beleaguered economy, already plagued by soaring inflation, does not need this kind of unnecessary price increase.

AD HOC COMMITTEE'S ATTEMPTS TO RESOLVE THE PROBLEM

When it appeared that the converted ad valorem rate would result in a huge increase in duty, the Ad Hoc Committee of Lead Consumers suggested to government, as a solution to the problem, several alternatives. Each alternative would have assured the lead producers that at least the same duty, 1.0625 cents per pound, as had existed for 28½ years, and in most instances, an increase in that duty would be collected. Not having received an affirmative response to any of our alternatives, we have now sought legislative relief.

The duty rate conversion and subsequent unprecedented increase in the price of lead presented the lead producers with a windfall increase in protection—all within the guise of a tariff cut. This was an unexpected benefit they seem unwilling to give up even though they appear to be operating at nearly full capacity and cannot produce enough lead to meet the annual U.S. demand. Not only must the United States currently import about 15 percent of the lead consumed in this country in order to meet annual demand, but forecasts indicate that imports will have to increase over the next decade.[6, 7]

In addition to U.S. requirements for lead importations to meet what might be called routine needs, it should also be recognized that the Administration has set a goal of some 865,000 tons of lead metal in our national defense stockpile. Since the current level is 601,000 tons, this would call for 264,000 tons to be added to the stockpile. Meeting this demand would add a further burden to the U.S. lead producing industry which it is not capable of meeting over a short term, and no doubt would require even a higher level of imported lead.

It is not our intention to see the lead producers harmed at all, since we believe that they must be a strong, viable industry to meet the critical needs of our country. Keeping the lead duty at what it has been for all these years is not harmful to lead producers. Letting it rise 65 to 100 percent is harmful to lead-using industries and to the ultimate consumer in the United States of batteries, gasoline, and the like.

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[6] Chase Econometrics, Executive Summary Report, January 1980, "Metals Investment in the Eighties: Outlook Unsettled by Energy Risks," p. 27.

[7] Exhibit IV provides a history and a forecast of U.S. lead consumption, production, and imports.

TARIFFS ARE NO SOLUTION TO REGULATORY COSTS

Some U.S. lead producers contend they need additional tariff protection because of stringent EPA and OSHA regulations. But, we submit that additional tariff protection, as an offset to other costs, was not an objective and is not consistent with the overall results of the MTN. If the MTN were to be used to provide additional protection in order to compensate a domestic industry for its other costs, certainly the duty rate on antiknock compounds should have been increased, not reduced by 50 percent, since the same problem applies to the antiknock and countless other industries adversely affected by EPA and OSHA regulations.

The battery producers face undefined increases in costs from EPA and OSHA rules that are at least as great as those faced by the U.S. lead producers. Neither batteries nor antiknocks benefited from additional tariff protection. Indeed, the tariff rates on these products were reduced. The point is that U.S. lead producers do not have any more EPA and OSHA problems than we do. This is a burden that all industries are having to bear, and while we think there are many solutions, windfall tariff protection is not the appropriate solution.

CONCLUSION

If indeed, an important objective of the MTN were to reduce tariffs, we urge this Subcommittee, the full Committee on Ways and Means and the U.S. House of Representatives to pass H.R. 6089, which will suspend until January 1, 1982, the ad valorem rate of duty and put back into effect the previously existing specific rate of duty on unwrought lead. During the 2 year suspension, the price behavior of lead should be closely followed so that at the conclusion of the 2 years, a fair and reasonable rate may be established. If a different ad valorem rate is deemed more appropriate, the Congress would then have an opportunity to enact legislation providing such a rate. We submit that such action would be consistent with U.S. trade policy, and indeed, the very type of an adjustment that the Congress envisioned might be necessary to remedy unintended results that would inevitably arise from the implementation of the MTN in the Trade Agreements Act of 1979.

We are not seeking to reduce the previous level of duty provided by the old specific rate. Similarly, we do not believe that we, nor the ultimate consumers in the United States, should be adversely affected by having to pay a large increase in duty and the equivalent increase in the price of all lead consumed in the United States. Therefore, we request expeditious action by Congress so that the specific rate of 1.0625 cents per pound on TSUS Item 624.03 can be temporarily reinstituted, effective January 1, 1980.

Thank you for this opportunity to present our views to the Subcommittee.

EXHIBIT I

U.S. LEAD PRICE HISTORY

(Price in cents per pound)

PRICE CHANGES [1]

Date of price change	Price	Date of price change	Price
1975:		1979:	
May 15	22.75	Jan. 2	40
June 2	19.0	Jan. 18	42
Aug. 13	20.0	Feb. 7	44
Dec. 15	19.0	Mar. 20	48
		May 24	55
1976:		June 29	58
Mar. 10	21.0	Sept. 28	58–65
Apr. 14	23.0	Oct. 9	58–63
July 8	24.5	Oct. 31	67–63
Oct. 6	25.5	Nov. 5	57–59
		Nov. 30	57
1977:		Dec. 14	55–57
Jan. 5	26.0		
Jan. 21	27.5	1980:	
Jan. 31	28.0	Jan. 4	52–55
Feb. 9	29.0	Jan. 7	50–52
Mar. 1	31.0	Jan. 11	48–52
Oct. 31	32.0	Jan. 21	50–52
		Feb. 27	50
1978			
May 4	31.0		
Aug. 14	33.0		
Sept. 12	35.0		
Oct. 6	37.0		
Oct. 31	38.0		

PRODUCER AVERAGE MONTHLY PRICES[2]

Month	1975	1976	1977	1978	1979
January	24.500	19.000	26.865	33.000	40.761
February	24.500	19.000	28.692	33.000	43.632
March	24.500	20.216	31.000	33.000	45.749
April	24.500	21.933	31.000	33.000	48.000
May	23.338	22.882	31.000	31.000	48.805
June	19.000	23.000	31.000	31.000	56.510
July	19.000	24.245	31.000	31.000	58.066
August	19.557	24.757	31.000	32.168	57.913
September	20.000	24.830	31.000	34.059	58.004
October	20.000	25.745	31.023	36.610	61.057
November	20.000	25.789	32.000	38.000	57.262
December	19.455	25.818	32.854	38.000	55.947
Yearly average	21.529	23.102	30.703	33.653	52.642

[1] Wall Street Journal.
[2] Metals Week.

[Price in cents per pound]

	History	
	Average annual producer price[1]	Average annual import price[2,3]
1975	21.53	20.47
1976	23.10	19.36
1977	30.70	27.24
1978	33.65	30.57
1979	52.64	47.28
	Forecast	
	Forecasted average annual producer price[4]	Estimated average annual import price[3,5]
1980	49.8	46.3
1981	53.5	50.5
1982	57.3	53.5
1983	61.8	57.0
1984	65.7	60.5

[1] Metals Week.
[2] U.S. Department of Commerce, IM 146 Annual Data for TSUSA 624.0350.
[3] Import price is the value for Customs purposes, exclusive of freignt and duty. The addition of freight and duty makes import price equivalent to U.S. producer price.
[4] Chase Econometrics, Executive Summary Report, January 1980, Metals and Minerals, pp. 17 and 19.
[5] Estimated price differential between U.S. producer price and import price based on forecast of LME-U.S. producer price differentials by Commcdities Research Unit Limited, Quarterly Lead Report, pp. 63-65.

EXHIBIT II

SCHEDULE OF THE EQUIVALENT CENTS PER POUND AT SELECTED AD VALOREM RATES USING A RANGE OF LEAD PRICES

Range of lead prices (cents per pound)	Selected ad valorem rates (percent)					
	5.1	4	3.5	3	2.5	2
20.8333	[1] 1.0625					
26.563		1.0625				
30.3572			[2] 1.0625			
35.4168			1.2396	1,0625		
36.0			1.260	1.080		
37.0			1.295	1.110		
38.0			1.330	1.140		
39.0			1.365	1.170		
40.0			1.400	1.200		
41.0			1.435	1.230		
42.0			1.470	1.260		
42.500			1.4875	1.275	1.0625	
43.0			1.5050	1.290	1.0725	
44.0			1.540	1.320	1.100	
45.0			1.575	1.350	1.125	
46.0			1.610	1.380	1.150	
47.0			1.645	1.410	1.175	
48.0			1.680	1.440	1.200	
49.0			1.715	1.470	1.225	
50.0			[3] 1.750	1.500	1.250	
51.0			1.785	1.530	1.275	
52.0			1.820	1.560	1.300	
53.0			1.855	1.590	1.325	
53.125			1.8594	1.5938	1.3281	1.0625
53.85			[4] 1.8848	1.6155	1.3462	1.0770
54.0			1.8900	1.620	1.350	1.080
55.0			1.9250	1.650	1.375	1.100
56.0			1.96	1.68	1.40	1.12
57.0			1.995	1.71	1.425	1.14
58.0			2.030	1.74	1.450	1.16
59.0			2.065	1.77	1.475	1.18
60.0			2.10	1.80	1.500	1.20
61.0			2.135	1.83	1.525	1.22
62.0			2.170	1.86	1.550	1.24
63.0			2.205	1.89	1.575	1.26
64.0			2.240	1.92	1.600	1.28
65.0			2.275	1.95	1.675	1.30
66.0			2.310	1.98	1.650	1.32
67.0			2.345	2.01	1.675	1.34
68.0			2.380	2.04	1.700	1.36
69.0			2.415	2.07	1.725	1.38
70.0			2.450	2.10	1.750	1.40

[1] Lead price used for specific to ad valorem rate conversion process.
[2] The price level at which lead imports would have to be valued for the new ad valorem rate of 3.5 percent to equate to the old specific rate of 1.0625 cents per pound.
[3] The cents per pound of duty equivalent to the 3.5 percent ad valorem rate now in effect using a 50 cents per pound ead price.
[4] The cents per pound of duty equivalent to the 3.5 percent ad valorem rate applied to the January 1980 imports of ead based on U.S. Department of Commerce data.

EXHIBIT III

ESTIMATED DOLLAR IMPACT ON U.S. ECONOMY RESULTING FROM THE INCREASED DUTY ON LEAD

BASIS FOR CALCULATIONS

Specific duty rate prior to January 1, 1980—1,0625 cents per pound.
Ad valorem duty rate effective January 1, 1980—3.5 percent.
Estimated annual U.S. consumption of lead—3 billion pounds.
Assume that additional duty will result in the price levels for all lead in the U.S. being affected (increased) by that additional amount.

ESTIMATED DOLLAR IMPACT

Applying the previous specific duty rate to the 3 billion pounds of lead annually consumed in the U.S. results in a base dollar amount of $31,875,000 calculated as follows:

$0.010625 times 3 billion pounds equals $31,875,000.

Applying the current ad valorem rate to the 3 billion pounds of lead at various lead price levels results in these dollar amounts:

At 3.5 percent and 50 cents per pound lead: $0.50 times 3 billion times 0.035 equals $52,500,000.

At 3.5 percent and 55 cents per pound lead: $0.55 times 3 billion times 0.035 equals $57,750.000.

At 3.5 percent and 60 cents per pound lead: $0.60 times 3 billion times 0.035 equals $63,000,000.

At 3.5 percent and 65 cents per pound lead: $0.65 times 3 billion times 0.035 equals $68,250,000.

The additional dollar impact on the U.S. economy at the various price levels is estimated to be:

At 50 cents per pound: $52,500,000 minus $31,875,000 equals $20,625,000.

At 55 cents per pound: $57,750,000 minus $31,875,000 equals $25,875,000.

At 60 cents per pound: $63,000,000 minus $31,875,000 equals $31,125,000.

At 65 cents per pound: $68,250,000 minus $31,875,000 equals $36,375,000.

U.S. LEAD CONSUMPTION/PRODUCTION/IMPORTS

[In thousands of short tons]

	History			
	Total reported/ apparent consumption [1]	Primary production [1]	Secondary production [1]	Imports [1]
1975	1,297.1	636.1	658.5	100.5
1976	1,490.1	652.9	726.6	145.9
1977	1,582.3	604.9	835.1	261.3
1978	1,579.3	624.4	847.9	244.9
1979	[2] [3]1,535.0	628.3	837.8	[4] 204.4
	Forecast			
	Total forecasted consumption [2]	Estimated primary production [2]	Estimated secondary production [2]	Estimated imports [2]
1980	1,485	630	775	200
1981	1,515	640	780	235
1982	1,545	660	790	248
1983	1,588	660	800	262
1984	1,622	660	825	270

[1] U.S. Bureau of Mines: 1974 to 1978 as reported; 1979, preliminary, apparent.
[2] Based on data from Chase Econometrics, executive summary report, January 1980, Metals and Minerals, p. 9 and 27.
[3] Forecasts presented to the Battery Council International in October 1979, by St. Joe Lead indicated 1979 through 1984 consumption (assuming that EPA lead-in-gasoline phase down is finalized at 0.8 grams pooled average) would be 1,560, 1,525, 1,540, 1,555, 1,570 and 1,595, respectively.
[4] U.S. Department of Commerce, 1M 146 Annual Data for TSUS 624.03.

Mr. VANIK. Are there any other comments by any members of the group to supplement the statements that were made?

Thank you, Mr. Priebe.

Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

I want to thank the panel for their testimony.

You will recall that a few minutes ago a representative of the Commerce Department, who oddly enough happens to be employed by the Trade Representative, indicated that there was some existing authority to reduce the current tariff rate.

If the President were so inclined, do any of you believe that the existing authority is sufficient to solve the problem?

Mr. PRIEBE. I think it is our feeling, as I recall the discussion, that the amount of authority is limited to a 20-percent reduction. In view of the escalation of lead prices that is being forecast, that would not be sufficient to solve the problem from our standpoint.

Mr. FRENZEL. If that authority were exercised, what effect would that have on what you have computed to be the inflationary impact on consumers?

I believe you indicated some numbers of millions of dollars that you felt were being expended unnecessarily and in an inflationary way.

Mr. PRIEBE. We estimated at the current market price of lead, 50 cents, the total inflationary impact would be $20 million annually. I am not sure that we could simply deduct 20 percent of that, Congressman; I am not sure that the numbers would work out exactly that way, but there would be some reduction.

Mr. FRENZEL. I also assume that you try to take care of your basic requirements from domestic producers?

Mr. PRIEBE. Yes. That is, good buying practice would normally require that you deal with those producers that are closest to you and obviously the domestic producers are in that situation.

Mr. FRENZEL. They are unable to meet all your requirements?

Mr. PRIEBE. Yes. That is certainly the case, particularly in the last years. Even their full production as well as all available imports put us in rather a risky position frequently for supply.

Mr. FRENZEL. The ability of the domestic supplier now is about 80 or 85 percent?

Mr. PRIEBE. Yes.

Mr. FRENZEL. Do I understand that we import 15 to 20 percent of our requirements that cannot be met domestically?

Mr. PRIEBE. Yes; that is correct.

Mr. FRENZEL. Mr. Chairman, I yield the balance of my time.

Mr. VANIK. Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would just like to thank the members of the panel for being here and for your testimony.

Mr. VANIK. Mr. Moore.

Mr. MOORE. No questions, Mr. Chairman.

Mr. VANIK. Thank you very much. I want to express my thanks to the panel.

The next witness is the Battery Council International, Mr. Robert H. Wilbur, director of Government relations.

STATEMENT OF ROBERT H. WILBUR, DIRECTOR OF GOVERNMENT RELATIONS, THE BATTERY COUNCIL INTERNATIONAL, ON BEHALF OF DeLIGHT BREIDEGAM, PRESIDENT

Mr. WILBUR. Mr. Chairman, I am Robert Wilbur. I am speaking on behalf of DeLight Breidegam, president of East Penn Manufacturing

Co. of Lyon Station, Pa., and president of the Battery Council International. Mr. Breidegam's firm is an independent regional battery manufacturer, serving replacement markets throughout the Middle Atlantic States and west as far as Illinois. The Battery Council represents 54 domestic producers of lead-acid storage batteries, including both the major national firms and many smaller local and regional battery manufacturers, such as East Penn.

I have also been authorized to speak on behalf of the Independent Battery Manufacturers Association in Largo, Fla., which represents approximately 60 smaller battery manufacturers. Their membership overlaps with ours, and the two associations together represent virtually 100 percent of the total U.S. industry.

The Battery Council fully supports H.R. 6089.

The average automotive storage battery contains 22 pounds of lead. Approximately 60 percent of the total U.S. supply of lead—including both primary and secondary production and imported lead—is used by our industry. This raw material is the largest single cost in the production of a battery.

Other speakers have detailed how the tariff on lead has increased approximately 65 percent since January 1 as the inadvertent consequence of a round of tariff negotiations which was intended, overall, not to raise but to lower tariffs.

The tariff increase caused by the sharp rise in the price of lead, primarily in 1978 and 1979 has already had a severe impact on our industry.

The United States is not and has not traditionally been self-sufficient in lead. Consumption—at present and for the foreseeable future—outruns U.S. production. Tariff increases are not needed to protect U.S. workers or U.S. firms. The effect of the tariff increase is to raise domestic lead prices by approximately the amount of the new, higher tariff.

The increased cost to domestic lead users, at current lead prices and lead use, is about $21 million. The battery industry's share of this would be about $12 million.

This extra tariff-induced cost would come at a time when the battery industry is already suffering from higher lead costs and is facing the prospect of extraordinary costs for compliance with the rules of two awesome Federal regulatory agencies—OSHA and EPA.

It has been argued that lead producers need the extra revenues for compliance with EPA and OSHA. I would like to put this in the context of the situation faced by the battery industry.

First, these rules are under review by the circuit court of appeals, and the final form which they will take is uncertain. The time frame in which the costs will be incurred could also change; the OSHA rule, as it now stands, calls for full compliance by the battery industry by March 1984, and by lead producers 5 years later.

Second, we know that if these standards, and particularly the OSHA standard, are upheld, the battery industry will face costs of compliance which will have a tremendous impact on the industry as we know it today.

When OSHA first proposed a new standard for occupational exposure to lead, the proposed level was 100 micrograms of lead per cubic meter of air 100 ug/m^3). On the basis of this proposal, the consulting

firm which prepared the economic impact assessment for OSHA estimated the capital cost of compliance for the battery industry at $345 million. The continuing, annual compliance costs for the battery industry were placed at $46 million a year.

The OSHA study also concluded that, because of economies of sale, the burden of compliance would fall disproportionately on the small battery firms. For this reason—in the words of OSHA's contractor—"this makes it hard to escape the conclusion that the OSHA lead standard is likely to bankrupt many small storage battery producers, possibly as many as 100 small companies."

Last month EPA issued proposed point source air emission standards for new or rebuilt battery plants. The EPA estimated price tag—capital alone—for these standards is $8.6 million over 5 years. We think this is about half the real cost.

Next—probably also this year—will come BPT and BAT standards for water effluent discharges, with full compliance likely to be required by 1983. The costs of compliance with TSCA and RCRA are yet unknown.

I hope these costs do not seem irrelevant to the tariff issue before you. I have detailed these costs to show the tremendous strain under which the battery industry—and particularly the smaller companies—are now operating. The additional $12 million a year cost to the battery industry of the increased lead tariff makes no sense. It is yet another burden—unnecessary and inflationary—on the battery industry and on the men and women who buy storage batteries for their cars and trucks.

We recognize that the lead producers also face many of these same problems. But to try to solve this problem through a tariff increase, which shifts costs to one segment of industry—the using industry—is, certainly, the worst of all possible courses. To throw an additional cost on the battery industry will only compound the difficulties which this industry is facing already.

We strongly urge you to suspend this tariff increase.

[The prepared statement follows:]

STATEMENT OF DELIGHT BREIDEGAM, PRESIDENT, BATTERY COUNCIL INTERNATIONAL

Mr. Chairman, I am DeLight Breidegam, President of East Penn Manufacturing Company of Lyon Station, Pennsylvania, and President of the Battery Council International. My firm is an independent regional battery manufacturer, serving replacement markets throughout the Middle Atlantic states and west as far as Illinois.

The Battery Council represents 54 domestic producers of lead-acid storage batteries, including both the major national firms and many smaller local and regional battery manufacturers. I have also been authorized to speak on behalf of the Independent Battery Manufacturers Association, which represents approximately 60 smaller battery manufacturers. Their membership overlaps with ours, and the two associations together represent virtually 100 percent of the total U.S. industry. As battery production is typically located close to markets, these firms are situated throughout the country.

The Battery Council fully supports H.R. 6089, which would prohibit until January 1, 1982 the conversion of the rates of duty on unwrought lead, other than lead bullion, to ad valorem equivalents.

The average automotive storage battery contains 22 pounds of lead. Approximately 60 percent of the total U.S. supply of lead—including both primary and secondary production and imported lead—is used by our industry. This raw material is the largest single cost in the production of a battery.

Other members of this panel have detailed how the tariff on lead has increased from 1.0625 cents per pound to a current rate of approximately 1.75 cents per pound as the inadvertent consequence of a round of tariff negotiations which was intended, overall, not to raise but to lower tariffs.

The tariff increase, amounting to about 65 percent at current prices, has been the consequence of the sharp rise in the price of lead since 1976. This increased lead price has already had an impact on our industry. Consumer resistance to higher prices has been a major factor in a sharp sales decline in 1979–80. Sales are currently off more than 15 percent from last year. The result has been reduced work-weeks almost throughout the industry, and layoffs in a large number of cities.

The United States, as other panelists have shown, is not and has not traditionally been self-sufficient in lead. Consumption outruns U.S. production, and tariff increases are not needed to protect U.S. workers or U.S. firms. The effect of the tariff increase is to raise domestic lead prices to or close to the higher price level of import costs plus the tariff.

The increased cost to domestic lead users, at current lead prices and lead use, would be about $21 million. The battery industry's share of this would be about $12 million.

This extra tariff-induced cost would come at a time when the battery industry is already suffering from the trebled price of lead of recent years—and facing the prospect of extraordinary costs for compliance with the rules of two awesome federal regulatory agencies—OSHA and EPA.

These rules are under review by the Circuit Court of Appeals, and the final form which they will take is uncertain. The time frame in which the costs will be incurred could also change; the OSHA rule, as it now stands, calls for full compliance by the battery industry by March 1984.

If these standards, and particularly the OSHA standard are upheld, the battery industry will face costs of compliance which will, at the very least, change the shape of the industry as we know it today.

When OSHA first proposed a new standard for occupational exposure to lead, the proposed level was one hundred micrograms of lead per cubic meter of air (100 ug/m^3). On the basis of this proposal, the consulting firm which prepared the economic impact assessment for OSHA estimated the capital cost of compliance for the battery industry at $345 million. The continuing, annual compliance costs for the battery industry were placed at $46 million a year.

The OSHA study also concluded that, because of economies of scale, the burden of compliance would fall disproportionately on the smaller battery firms. For this reason—in the words of OSHA's contractor—"this makes it hard to escape the conclusion that the OSHA lead standard is likely to bankrupt many small storage battery producers, possibly as many as 100 small companies."

These estimates—from OSHA's own consultant—were based on the original OSHA proposal of 100 ug/m^3. When it came time for its decision, OSHA halved this level—to 50 ug/m^3.

There are no estimates of the cost of compliance with the final 50 ug/m^3 standard. Almost certainly, the costs will be far greater than twice the estimates for meeting the 100 ug/m^3 proposal. It is even doubtful that the standard is technically feasible—that is—whether it could be met no matter how much is spent.

Last month, EPA issued proposed point source air emission standards for new or rebuilt battery plants. The EPA-estimated price tag—capital alone—for these standards is $8.6 million over five years. We think this is about half the real cost.

Next—probably also this year—will come BPT and BAT standards for water effluent discharges, with full compliance likely to be required by 1983. Since the rules have not been issued, we know even less about the cost. But one recent EPA study suggests at least $63 million, again in capital costs alone. The true cost will probably be far greater.

I have detailed these costs to show the tremendous strain under which the battery industry is now operating. The additional $12 million a year cost of the battery industry of the increased lead tariff makes no sense. It is yet another burden—an unnecessary burden—on the battery industry and on our customers—the men and women who buy storage batteries for their cars and trucks. (One further consequence, of course, could be increased imports of finished batteries.)

There are several ways that the overall problem of meeting the cost of EPA and OSHA rules could be handled. First, the agencies could withdraw and

revise the rules. Perhaps the courts will help them do this. Second, the Congress might insist on common-sense changes—such as permitting compliance through the use of respirators, rather than insisting on engineering changes, the most expensive of all means of compliance. Third, the Congress might help by providing relief through tax reform, such as a one year depreciation of non-productive investments needed to meet government-mandated standards.

To try to solve this problem through a tariff increase, which strikes at one segment of industry—the using industry—is, certainly, the worst of all possible courses.

Mr. VANIK. Thank you very much.

Any questions, Mr. Vander Jagt?

Mr. VANDER JAGT. No. Thank you very much.

Mr. FRENZEL. No questions.

Mr. VANIK. Thank you.

The next statement is by Mr. Charles Carlisle, vice president of St. Joe Minerals Corp., on behalf of AMAX, Inc.

STATEMENT OF CHARLES CARLISLE, VICE PRESIDENT, ST. JOE MINERALS CORP., ON BEHALF OF U.S. PRIMARY LEAD PRODUCERS, ACCOMPANIED BY EDWARD K. BERGIN, ASARCO INC.; PHILLIP E. RUPPE, AMAX INC.; AND GARY WICKHAM, BUNKER HILL CO.

Mr. CARLISLE. Thank you, Mr. Chairman.

Mr. VANIK. Your entire statement will be printed in the record. You can read from it or excerpt from it.

We are happy to have our former distinguished colleague, Mr. Ruppe, with us.

Mr. CARLISLE. Mr. Chairman, I just want to call attention to one point in the prepared statement. There is a typographical error on the first page of the summary of principal points under the fifth dot in the fifth line. It should read "It is not in the national interest for the United States to reduce unilaterally the tariff on lead metal."

There is a similar correction on page 3, line 17.

Let me try, Mr. Chairman, very quickly to summarize our reasons why we are opposed to H.R. 6089 and I would also like to touch on some of the points that have been raised in the testimony and in the questions and answers this morning.

As the administration witnesses pointed out, the change from a specific duty of 1.0625 cents a pound to, in effect, 4 percent ad valorem was carefully worked out during the Tokyo round. The duty was further cut unilaterally to 3½ percent, a cut which we went along with, which we acquiesced in. In percentage terms, Mr. Chairman, the lead metal duty today is just about at its lowest point ever, that is, measured in ad valorem terms.

Now, if you will take a look at chart 2 in the prepared testimony, Mr. Chairman, you see the heavy black line showing unwrought lead. You see where we are. You also see a couple of other tariffs on there and I am going to come back to that in a minute or two.

You see how the lead metal tariff in ad valorem terms has come down steadily over the years. There is a slight jog upward because of the way the specific duty worked in relationship to the price last year, but it's still a very, very low 3½ percent.

A third point I would like to make, and here I refer you to chart 1 and we do have a big chart for this, if you will notice this chart, Mr. Chairman, there are three major industrial areas in the world: Japan, the Economic Community of Western Europe, and the United States.

Our tariff right now is as low as any. If this bill is passed, then our tariff will be under that of any of the other major industrial areas. What that is going to mean is that during periods of market weakness such as, incidentally, we are going into right now, and I will come back to that, excessive metal imports could damage the American lead industry. There is a related point here on this question of competitive ability.

You have to really look at our industry as competing with other industries around the world. We are producing an internationally traded commodity. We are primarily lead producers. That is, we produce lead metal from ores and concentrates. Some of us have our own mines but a couple of companies here represented by the gentlemen to my immediate right and to my immediate left have to go out and buy a substantial portion of their lead concentrates from the smelters.

If this tariff is further reduced, and we have the lowest tariff among the industrial nations, then it is going to make it that much more difficult for them to compete for lead concentrate in the world market.

The next point I would like to refer you to is chart 3 which is attached to the prepared testimony. You see that dotted line. If you look back there at chart 3, that is the percent change in the price of lead in deflated terms. In other words, it is adjusted for inflation.

You see how that line goes up and down over the last 5 years, for that matter particularly over the last 5 years. You see which way the line is headed now. It is headed south. The lead price is declining, it is declining sharply. In real terms it is almost as low as it was during the 1975 recession.

You can also see the other lines showing the percentage change in prices which show that the lead industry is a very cyclical industry. There is another way you can look at this thing and that is to look at chart 4 in the prepared testimony. I would invite your attention to that. If you will take a look at chart 4, again this line is headed north. It is going up.

You will notice that it is actually reaching, beginning to reach levels that it reached during the 1974–75 recession. That is producer stocks right now. I can speak for our own company, our own stocks have multiplied. I won't say how much because it is confidential business information. I know St. Joe Minerals have gone up very sharply in the last few months.

Let's go on here to this question of the EPA and OSHA standards. Our friends, and they are friends because they are our customers in the battery and the tetraethyl lead industry, point out that they have to meet very severe EPA and OSHA standards. We know about that. We worked with them in opposing some unrealistically stringent standards.

We also have to meet standards of course. Frankly, gentlemen, there is no technology available now. What is the difference between their situation and ours? Let me tell you what the difference is.

We have very, very low tariff protection. Only 3½ percent. Imports take 15 percent of our market right now, Mr. Chairman. On the other hand, our friends in the battery industry have a duty of 8 percent, which will be cut to 5.3 percent. The lead additive, the tetraethyllead manufacturers have a 15 percent duty now, 15 percent being cut to 7.2 percent by 1987.

What does this mean in practical terms? What it means is this: It means that whereas we have 15 percent of our market taken by imports, by my own calculations, less than 1 percent of the gasoline additive market is taken up by imports. I can give you the figures if you would like. Only 2½ percent or less of the battery market, that is, excluding the batteries that are of course imported on imported automobiles, is taken up by imports.

Now there is great concern and rightly so in this committee about inflation. Let's talk about inflation for just a moment.

As one of the previous witnesses pointed out, there are 20 to 25 pounds of lead in a battery. The increase, if you want to put it that way, that has resulted from the conversion of a specific duty to an ad valorem duty is roughly 0.7 of a cent a pound. That means there is an added cost increase of 15 to 16 cents a battery as a result of what has happened during the Tokyo round tariff negotiations.

Let's not forget the fact that the duties on batteries, for example, have also been going up because they have had these ad valorem duties right along, 8.5 percent a few years ago, 8.1 percent. In practical terms since 1975 the tariff increase as a result of the change in the lead duty has resulted in about 20 cents per battery. What has resulted from the duties on batteries themselves? Again, by my own calculations, about $1.70, not 20 cents. Eight times as much as we are experiencing. So I must say with all due respect that it seems at least to me that it is a rather strange place to start cutting rates on his already very, very low lead tariff.

I want to conclude my remarks now by saying that it hardly seems that 3½-percent duty is excessive. I wish to heaven we had 8.1 percent or 15 percent because if we did at least I would not be up here fussing about a modest cut. But we are way down. Our tariff is as low as any other major industrial country in the world. We pay these EPA and OSHA costs and we don't have real tariff protection as our friends, the consumers, have. So what we are saying to you is that the duty on lead, if lowered now at a time when the lead market is soft, and heaven knows how much softer it will get, if we go into recession it will put American lead producers at a competitive disadvantage. That is the reason we respectfully request that this committee not report out favorably H.R. 6089.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF CHARLES CARLISLE, ON BEHALF OF ST. JOE MINERALS CORP., AMAX INC., ASARCO INC., AND THE BUNKER HILL CO.

SUMMARY OF PRINCIPAL POINTS

The domestic primary lead producing industry opposes the enactment of H.R. 6089 for the following eight basic reasons:

The recently negotiated 3.5 percent duty on imported lead metal is low by historic U.S. standards and is at parity with the duty of the European Community and lower than that of Japan and Mexico, making the U.S. one of the most open lead markets in the world.

The current 3.5 percent duty was arrived at in recent multilateral and bilateral negotiations in accordance with U.S. trade policy favoring reciprocal tariff reductions. Further reduction by unilateral action by the U.S. is not consistent with our trade policy, or with our long-range national interests, including our interest in freer trade.

The lead industry is cyclical, and subject to sudden and prolonged periods of slack demand and depressed price. Even though the price rose in 1979, it has dropped in the last four months by 21 percent. Domestic lead shipments fell precipitously in the last two months of 1979 to the lowest level in at least two years. At the same time stocks at U.S. plants rose substantially to a level at the end of 1979 a least three times what they were two years earlier.

H.R. 6089 would have the effect of reinstating a specific rate of duty, 1.0625 cents per pound of lead. The recently negotiated change from a specific rate of duty to an ad valorem rate was in accordance with overall U.S. trade policy and in agreement with our trading partners. It was intended to facilitate the maintenance of parity with our trading partners and competitors. In times of rapid inflation, specific rates of duty quickly become obsolete. The move to an ad valorem rate was proper and to shift back to a specific rate of duty would be improper.

The U.S. lead smelting and refining industry is facing enormous costs to comply with recently enacted EPA and OSHA regulations. These regulations are far more onerous than are those in the principal lead exporting countries and will put U.S. consumers in a competitive disadvantage. It is not the national interest for the United States to reduce unilaterally the tariff on lead metal.

The two principal lead consuming industries, producers of batteries and gasoline additives, who support H.R. 6089, argue that they also are affected by new EPA lead standards. However, they have, and will continue to have, much higher tariff protection than U.S. lead producers. (See Chart 2). Imports account for an estimated 2½ percent of the U.S. battery market, less than 1 percent of the gasoline additives market but about 15 percent of the lead metal market.

H.R. 6089 would impair the ability of non-integrated U.S. smelters and refineries to bid successfully for raw materials—ores and concentrates—in the world market. The limited tariff protection helps assure U.S. producers a sufficient return to bid competitively.

The U.S. lead industry is closer today to national self-sufficiency than at any time in the past 40 years. If we are permitted to enjoy a position of parity with our foreign competition, we have the capacity to increase production and to reduce the nation's dependence on imported metal.

INTRODUCTION

I am Charles Carlisle, Vice President of St. Joe Minerals Corporation. This testimony is presented on behalf of the following U.S. producers of lead, which companies account for virtually all U.S. primary refined lead production: AMAX Inc.; ASARCO Incorporated; The Bunker Hill Company, subsidiary of: Gulf Resources & Chemical Corp.; and St. Joe Minerals Corporation.

Each of the four companies is represented today on our panel. Present with me are Edward K. Bergin, General Sales Manager of ASARCO Incorporated; Phillip E. Ruppe, Director of Washington Services of AMAX Inc.; and Gary Wickham, Vice President of Bunker Hill Company. We are accompanied by Lyn Schlitt of the law firm of Covington & Burling, and Henry Sandri Jr., of Economic Consulting Services Inc.

The four companies represented on this panel oppose enactment of H.R. 6089 and urge instead retention of the recently negotiated 3.5 percent ad valorem duty on imports of unwrought lead. We oppose H.R. 6089 for the following eight reasons:

The recently negotiated 3.5 percent duty on imported lead metal is low by historic U.S. standards and is at parity with the duty of the European Community and lower than that of Japan, and Mexico, making the U.S. one of the most open lead markets in the world.

The current 3.5 percent duty was arrived at in recent multilateral and bilateral negotiations in accordance with U.S. trade policy favoring reciprocal traffic reductions. It is not in the national interest for the United States to reduce unilaterally the tariff on lead metal.

The lead industry is cyclical, and subject to sudden and prolonged periods of slack demand and depressed price. Even though the price rose in 1979, it has dropped in the last four months by 21 percent. Domestic lead shipments fell precipitously in the last two months of 1979 to the lowest level in at least

two years. At the same time stocks at U.S. plants rose substantially to a level at the end of 1979 at least three times what they were two years earlier.

H.R. 6089 would have the effect of reinstating a specific rate of duty, 1.0625 cents per pound of lead. The recently negotiated change from a specific rate of duty to an ad valorem rate was in accordance with overall U.S. trade policy and in agreement with our trading partners. It was intended to facilitate the maintenance of parity with our trading partners and competitors. In times of rapid inflation, specific rates of duty quickly become obsolete. The move to an ad valorem rate was proper and to shift back to a specific rate of duty would be improper.

The U.S. lead smelting and refining industry is facing enormous costs to comply with recently enacted EPA and OSHA regulations. These regulations are far more onerous than are those in the principal lead exporting countries and will put U.S. producers at a competitive disadvantage. It is not the national interest unilaterally to reduce the U.S. tariff on lead metal at the very time agencies of our government are demanding that the domestic industry make major long-term commitments to new plant and equipment, and to assume the risk of investment in new and untested technology.

The two principal lead consuming industries, producers of batteries and gasoline additives, who support H.R. 6089, argue that they also are affected by new EPA lead standards. However, they have, and will continue to have, much higher tariff protection than U.S. lead producers. (See Chart 2). Imports account for an estimated 2½ percent of the U.S. battery market, less than 1 percent of the gasoline additives market but about 15 percent of the lead metal market.

H.R. 6089 would impair the ability of non-integrated U.S. smelters and refineries to bid successfully for raw materials—ores and concentrates—in the world market. The limited tariff protection helps assure U.S. producers a sufficient return to bid competitively.

The U.S. lead industry is closer today to national self-sufficiency than at any time in the past 40 years. If we are permitted to enjoy a position of parity with our foreign competition, we have the capacity to increase production and to reduce the nation's dependence on imported metal.

THE U.S. TARIFF RATE WAS ALREADY REDUCED TWICE

The current 3.5 percent rate of duty is low by both historic U.S. standards and in comparison with international standards. Prior to the recent Geneva MTN trade negotiations, the U.S. duty on unwrought lead was 1.0625 cents per pound. This specific rate of duty had been in place for over 25 years, and had afforded substantial protection to the domestic industry until its effectiveness was eroded by the double digit inflation of the mid-1970s. In the 1960s, after the Kennedy round of tariff adjustments, the ad valorem equivalent was never below 6.3 percent. From 1965 through 1970 the average ad valorem equivalent was about 7 percent. As late as 1973, with lead selling at what was then a 20-year high of 19 cents per pound, the old fixed rate of duty amounted to an ad valorem equivalent of 5.5 percent. But in the late 1970's with metal prices rising to reflect rapid inflation in the U.S. and a weakening U.S. currency, the ad valorem equivalent of the fixed rate rapidly dwindled.

It was, therefore, reasonable that our negotiators agreed to a formula that assigned to the old fixed rate an equivalent rate of 5.2 percent ad valorem using 1976 as a base year. The further agreement of the U.S. negotiators to a reduction to 4 percent represented a substantial concession, given in exchange for a reciprocal reduction in the Japanese tariff. Moreover, the Japanese opted for an eight-year phasing of their new lead tariffs, while the U.S. determined to implement fully the new tariff for lead on January 1, 1980.

No sooner had agreement been reached at Geneva when the 4 percent U.S. rate was reduced again, this time in bilateral negotiations with Mexico, to 3.5 percent. The U.S. industry was consulted during these negotiations, and acquiesced to the further reduction to 3.5 percent because it placed the U.S. duty at parity with the EC.

Thus, in the last year the United States reduced its tariff on unwrought lead by 32.7 percent.

By January 1, 1980 when the 3.5 percent rate became effective, it represented the lowest sustained level of lead duties in modern U.S. history. And, at 3.5 percent, the U.S. is now on a parity with the European Community, and is substantially below the level of Japan, and Mexico. (See Chart 1.)

H.R. 6089 would require a further tariff cut to approximately 2.1 percent ad valorem for two years. This would mean that the U.S. would further reduce its tariff by 60 percent, a much more substantial reduction than that negotiated in the MTN. In effect, the U.S. would be granting further significant concessions to our foreign competitors without reciprocity. The objective of the MTN was to reduce tariffs reciprocally. After the hard negotiating undertaken in Geneva, including the work contributed by this Committee, is this sound trade policy?

We think not. Any unilateral reduction of the tariff on lead is totally unwarranted.

In addition, the current lead duty is far lower than that now insulating the two principal lead consuming industries, lead-acid batteries and tetraethyl lead, from foreign competition. The current duty on tetraethyl lead, a gasoline additive, is 15 percent ad valorem and for lead-acid storage batteries 8.1 percent, two major lead-contained items imported into the U.S. Even though these rate are being reduced due to the MTN, they will still approximate twice the current rate for unwrought lead. (See Chart 2.)

THE U.S. LEAD MARKET IS HIGHLY CYCLICAL AND PRICES ARE CURRENTLY DROPPING

The lead market has been strong throught the world for the past couple of years. It is, however, like many other metals, highly cylical, and the future is uncertain. Periods of depressed demand, low prices, and in the United States, rising imports are not uncommon in the lead metal business. For example, the average price as quoted by Metals Week for U.S. producer prices of lead dropped from 63 cents per pound on October 26, 1979 to 50 cents per pound as of the present, a decline of 21 percent, a period also marked by falling demand and increasing stocks of lead.

Chart 3 further demonstrates the cyclical nature of the lead industry. This chart shows the percent change in a 3-month moving average in the real price of common pig lead. This chart demonstrates that prices increased during the 1974 metal boom and then fell dramatically in the recession of 1975. The chart also shows the rise in prices that occurred in 1978 through mid-1979 and the current downturn in the marketplace. As is evident from this chart, the nature of the industry is highly cyclical and subject to wide fluctuations.

Domestic lead shipments fell precipitously in the last two months of 1979 to the lowest level in at least two years. At the same time stocks of refined lead at U.S. plants rose substantially at the end of 1979 to at least three times what they were two years earlier. (See Chart 4.)

Chart 4 further demonstrates the dramatic shift in producer stocks in the last 2 months of 1979 and the first two months of 1980. By March of 1980, producer stocks had risen to over 73 thousand tons, an increase of over 490 percent since October 1979. It should be noted that the last time producer stocks were this high was in August 1976, in the middle of a recession in the lead industry.

Lead is a homogeneous product, a true commodity. There are no major variations in the qualities of the metal produced in different nations. The result is that consumers are able to switch easily among suppliers on the basis of price. Any decrease in the price of lead imports, no matter how small, can cause injury to the domestic industry, and can set off a rapid downward price spiral. To deprive the industry of the current tariff which, while modest, partly offsets the effects of the cyclical imbalances in the international lead market, would be unjustifiable, especially in high of the virtual certainty that the price of lead will continue to fluctuate through up and down cycles.

Uncertainty prevails even in the very short term, due to the impact on the supply-demand balance of buying by the Eastern bloc nations. It is widely accepted that unanticipated purchases by the Soviet Union were in large measure responsible for the price levels reached in 1979. No one in the industry is capable of predicting what actions the Soviets will take in the future.

AD VALOREM RATES ATTEMPT TO COMPENSATE FOR INFLATION

H.R. 6089 would have the unhappy consequence of reinstating a specific rate of duty in place of an ad valorem rate. The total inadequacy of specific rates of duty in periods of rapid inflation is well illustrated by what happened to the U.S. duty on lead in the late 1970s.

In the MTN negotiations, an agreement was reached that all countries change their specific tariff rates for most items under negotiation to ad valorem rates. Because most nations used ad valorem rates, the change in tariff structure was desired in order to make it easier to compare tariffs among trading partners, and to facilitate the tariff equalization policies of the United States and other

governments. The U.S. change to ad valorem rates was made in consultation with U.S. producers, consumers, and government advisors on each product classification and category.

Ad valorem rates have the important advantage of automatic adjustments to changes in price levels, compensating for inflation and price depression, and avoiding the confusion and inequities caused by specific rates and fluctuating currencies. With present projections of a continuing rate of inflation in the U.S. of 10 percent and higher, there is no justification for a return to specific duties.

Supporters of this bill claim that the 3.5 percent duty currently in effect is in fact an increase. In fact, lead duties have traditionally been far higher. In 1950 the ad valorem equivalent tariff was 16.0 percent; in 1960 it was 8.9 percent; in 1970 was 6.8 percent; and it is currently at 3.5 percent. Clearly a reduction to 2.1 percent would be totally unjustifiable under the steady decline in duties experienced by this product.

THE U.S. LEAD INDUSTRY IS ALREADY HARD PRESSED BY EPA AND OSHA REQUIREMENTS

The domestic lead industry bears an unusually heavy burden in costs to comply with pollution control regulations. The industry has already invested millions of dollars in compliance with Environmental Protection Agency (EPA) requirements for emissions of sulfur dioxide and particulates—in the form of both capital costs, which are still being amortized by individual plants, and increased operating costs. In addition, the industry faces substantially higher future costs posed by recently enacted EPA and OSHA lead standards. These new standards are widely recognized as technologically and economically unattainable, requiring a virtual recapitalization of the entire primary and secondary lead industries. Some estimates place the current compliance costs at something in excess of $1 billion. In promulgating the standards, EPA and OSHA acknowledged the significant costs of strict compliance, which could result in the demise of the industry. EPA Administrator Douglas Costle declared that it may be necessary to seek congressional relief to prevent severe dislocations in the industry.

During the last year, the agencies have indicated a willingness to cooperate with industry in resolving this dilemma; EPA and OSHA have commissioned a major, two-year study to evaluate the nature of lead exposure and to analyze technology and economics of compliance, and several companies have indicated an intention to cooperate in the study.

In the end, we believe that common sense will prevail, and that the industry will not be required to do the impossible. There can be no doubt, however, that we will be called upon to spend additional large sums to minimize environmental and employee exposure to lead. It would be self-defeating indeed for the nation, as well as for the industry and its customers, to reduce the minimal protection offered by the 3.5 percent ad valorem tariff just at a time when its financial resources are being taxed in this way.

SPECIAL COMPETITIVE PROBLEMS OF NONINTEGRATED SMELTERS WOULD BE EXACERBATED BY DUTY REDUCTION

The U.S. primary lead industry is composed of integrated firms with mines and smelting operations, and non-integrated firms with smelting operations only. H.R. 6089 would be especially harmful to the two companies represented here that are custom smelters and refiners of lead: i.e., those companies that are non-integrated, and must compete in highly competitive, international markets for a limited world supply of lead ores and concentrates to feed their smelters. The outcome of this competition should be dependent upon the individual plant's ability to bid successfully for lead raw materials based on its production costs. Unfortunately, U.S. lead smelters and refiners have been unable to obtain sufficient raw materials to maintain operations in recent years because other industrialized nations such as Japan impose a higher tariff on refined lead while importing ore duty free. This in turn, enables their processing industries to bid more aggressively—and successfully—for lead ores and concentrates. The practice, which is particularly prevalent in Japan but which also exists in the EC, is a direct result of a clearly defined policy on the part of competing nations to encourage their own domestic smelting and refining industry and to assure stable sources of refined metals to their domestic fabricating industries.

The evidence is that U.S. lead smelters and refineries are in fact competitive from the standpoint of costs and technology with other nations. Yet, the contrast in attitude and policies affecing competitivenes between other industrailized

nations and our own country could not be greater. For example, the United States remains the only industralized nation to maintain a tariff on imported metal bearing raw materials, while at the same time minimizing tariffs on refined metal. Government regulations enacted in recent years have substantially added to U.S. smelting costs, which combined with the effect of price restrictions on domestically sold refined lead metal have hampered the ability of the non-integrated industry to compete effectively for lead raw materials.

Without the minimal 3.5 percent ad valorem duty the U.S. lead custom smelting and refining industry would be hard-pressed to compete for raw materials in the face of higher tariffs enjoyed by our competitors in other nations.

GIVEN REASONABLE TARIFF TREATMENT, U.S. LEAD PRODUCERS CAN COMPETE SUCCESSFULLY

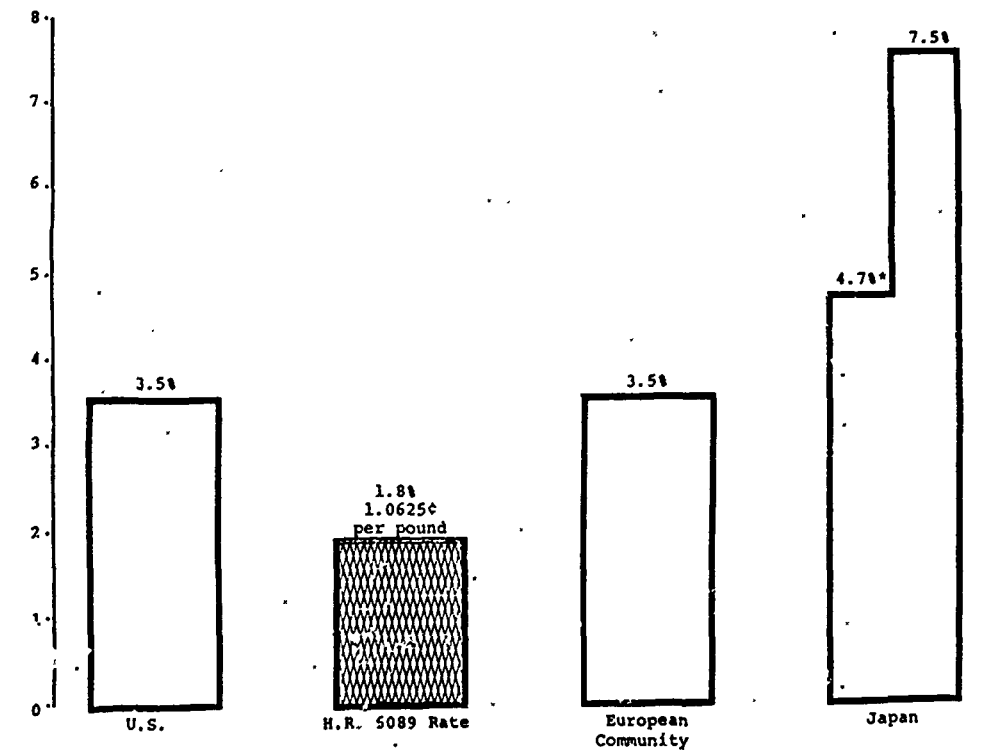
The U.S. today is closer to being self-sufficient in lead than at any time in recent history. With the opening up of mines in the new Missouri lead belt in the late 1960's, net imports of lead in ores, scrap, bullion and refined metal dropped from the 400,000 to 500,000 ton range that prevailed in the mid-1960s, to about 200,000 in the mid-1970s.

Under the current levels of domestic demand the United States could be self-sufficient in the production of primary lead. However, since we currently import approximately 15 percent of our domestic lead consumption, there is an over-supply in the market which is helping to cause the price to fall and stocks to increase. This would ultimately result in stagnant or decreased production by U.S. primary lead producers. This decrease has already been forecast by the U.S. Department of Commerce in its review of lead in the 1980 U.S. Industrial Outlook.

The real impact on the industry will occur when production levels bottom-out. At that point lower priced lead imports from foreign nations, which utilize full employment policies and sell lead at any price necessary to keep people employed, will flood the U.S. market and depress prices further. Such a situation would be most unfortunate since the domestic lead industry could currently supply the entire domestic demand for primary refined lead.

Chart 1

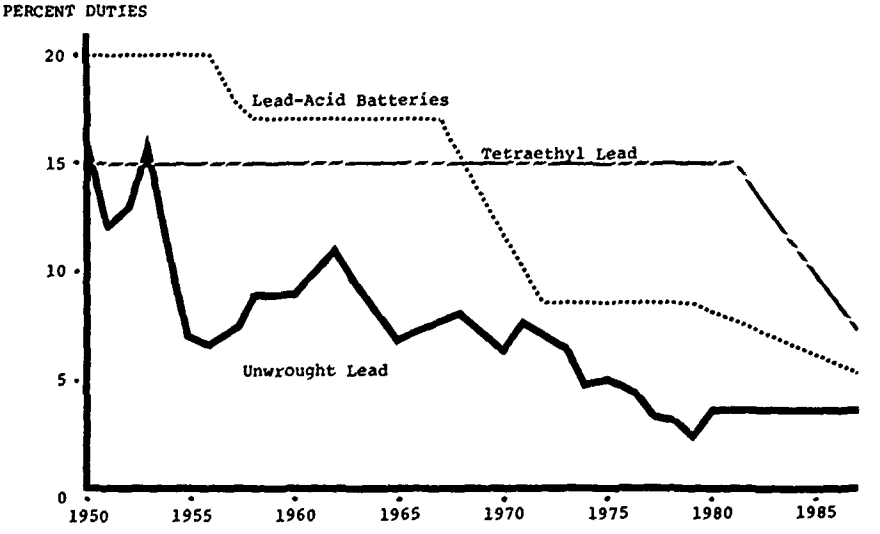
TARIFF RATES ON UNWROUGHT LEAD



*Final rate after 7 years.

Chart 2

AD VALOREM DUTIES ON LEAD-ACID BATTERIES AND TETRAETHYL LEAD AND THE AVERAGE AD VALOREM EQUIVALENT 1/ ON UNWROUGHT LEAD, 1950 THROUGH 1987

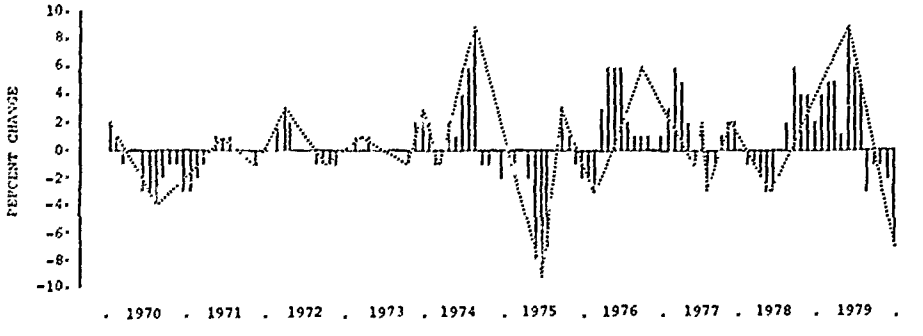


1/ The specific rate of duty on unwrought lead was applied against its average price to determine its ad valorem equivalent.

Source: Tariff Schedules of the United States, U.S. International Trade Commission, and Metal Statistics 1979.

Chart 3

PERCENT CHANGE OF A THREE-MONTH RUNNING AVERAGE IN THE REAL PRICE OF COMMON PIG LEAD, 1/ MONTHLY, 1970-1979



Note: The oscillating dotted line demonstrates the cyclical price behavior of lead metal.

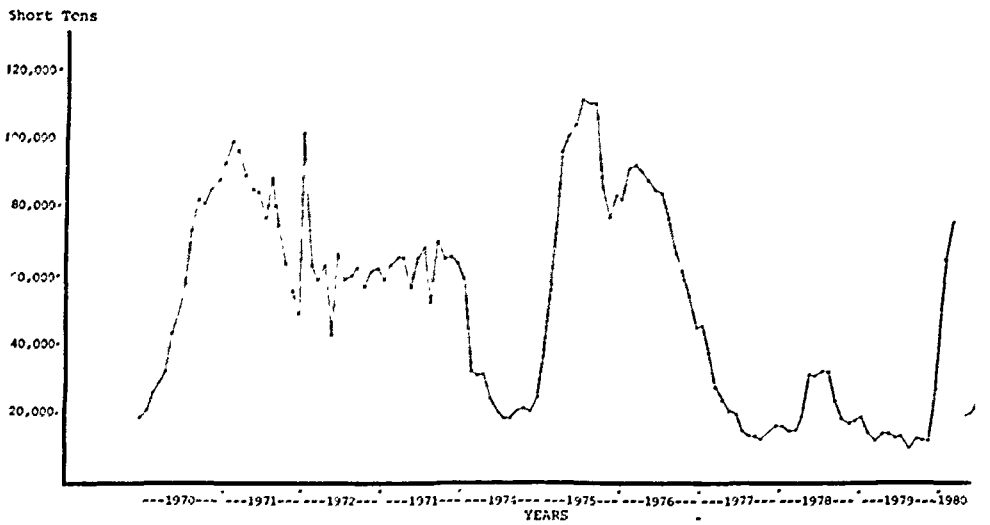
1/ Prices were deflated by the Producer Price Index for Industrial Commodities - PPI 03.

Source: Bureau of Labor Statistics, Producer Price Indexes for Industrial Commodities - PPI 03 and Common Pig Lead - PPI 10220111.

Chart 4

PRODUCERS' STOCKS OF REFINED LEAD IN THE UNITED STATES, 1970-1979 AND JANUARY AND FEBRUARY 1980

(in short tons)



Source: American Metal Market, Metal Statistics 1974 and Metal Statistics 1979.

Mr. VANIK. Are there any other supplemental statements by members of your group?

Mr. RUPPE. I would like to make the statement that we feel in our company, AMAX, and in our industry that we have done our bit to fight inflation. Certainly we are in a highly competitive industry. The mining industry is competitive and the environmental costs that we absorb have been significant. It is true that the change from straight line duty to the ad valorem duty in lead increased the price of a battery by about 15 cents a battery but I think our defense it is well worth noting that since 1975 the price of the battery has gone up from something like $16.85 to $38.89, well over a 100-percent increase. So certainly the 14-, 15-, 16-cent increase in the tariff cost applied to that battery is in no way a measurable amount of the price increase in the last 5 years.

The last thing I think in equity we ought to look at is the fact that the MTN negotiations just weeks or months ago set tariffs for all of the industrial nations, for Japan, for the European Economic Community and the United States. During negotiations we agreed to a 4-percent ad valorem duty. That was subsequently cut in negotiations with Mexico to 3.5 percent.

So, today we have a 3.5-percent ad valorem duty as does the European Economic Community. On the other hand, Japan has something like a 4.7-percent duty not today but one that will be phased in over a number of years. When they do phase the tariff in 8 years later they will still be substantially higher than the low 3½-percent ad valorem duty charge in the United States.

It seems to me in equity that we are as low as any industrial nation today. The MTN negotiations have just been concluded. So I really find it difficult to understand why we should make another unilateral move to cut tariffs when there is no reciprocal action forthcoming

from our major industrial partners. Certainly none of them have greater obligations at home in terms of environmental cost than does the American miner.

We at AMAX are not complaining about the environmental cost to this committee but we do think we ought to be treated equitably, the same as our European or Japanese industries.

That is all.

Mr. VANIK. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I would like to welcome members of the panel, particularly my good friend and colleague from Michigan, Phillip Ruppe, and to thank you for your very interesting testimony. I have just one question.

Why in your opinion, is the price of lead entering a period where the price is going down?

Mr. CARLISLE. Let me begin and then we have several market experts with us.

There have been probably two factors that have helped to push the price up and make the lead market tight. One is Soviet buying abroad. Remember, again, lead is an internationally traded commodity. Prices abroad do affect the prices here and vice versa. One has been the heavy Soviet purchases. How long that will continue, heaven only knows.

The thing is that there has been very heavy demand for batteries during the past several winters because they have been very cold as our friends in the battery industry will tell you, and there have been a lot of replacement batteries sold. This past winter has been warm, probably the battery population is young, so therefore the demand for batteries is down, hence the demand for lead is declining.

Mr. VANDER JAGT. Do any of the members have an opinion at this time as to where the price might stabilize?

Mr. CARLISLE. No, sir, and we shouldn't. I mean we certainly don't have a consensus on that. I think really it depends. My own personal belief is that the price will go lower than it is now.

Our price last fall at St. Joe Minerals was 63 cents a pound. It is now 50 cents a pound. My guess is that it will go lower. I wish it wouldn't. I think it will. How much lower it will go depends on what happens to the American economy for one thing.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

I too want to thank the distinguished panel for their testimony.

I notice you claim that foreign tariffs are higher than ours, and we do not provide enough protection or at least a comparable amount of protection. You said we had the lowest tariff of industrial nations. Have you erased Canada off your map? Are they not an industrial nation?

Mr. CARLISLE. There are three major industrial markets. I don't think Canada is a major industrial market. I won't try and quibble with you about a definition of Canada. I think there is confusion, Mr. Frenzel, regarding Canada. The Canadian tariff is 4 percent. Other people tell us that when the lead metal crosses the Canadian border for some reason it has not been dutiable at 4 percent. I frankly don't know what the duty is in Canada right now.

Mr. FRENZEL. On pig it is zero. On bars it is 4 percent.

Mr. CARLISLE. Bars is the way we normally sell it.

Mr. FRENZEL. The other question is of course the EC, which is supposed to have a 3.5-percent duty; but I am told that much of the lead that is imported to the EC moves at a rate that is less than 3.5 percent such as imports from Japan which I am told are 2.1 percent.

I believe your point is interesting but not necessarily persuasive about the level that the various countries apply to protect their own industry. Each country has a different situation. Some, like you, have industries that feel they need protection and they try to carry them higher. Others are less interested.

I don't think they are directly comparable, nor do I think our tariff policy need be set because some other country has set a certain policy.

Mr. CARLISLE. Could I respond?

Mr. FRENZEL. Yes; all of my sermons do allow a response.

Mr. CARLISLE. As far as the 3½ percent in the EEC, we have carefully checked that. This is the first time that I have heard there is any duty lower than 3½ percent applied in the case of the EEC.

There is a broader point. Frankly, I would like to reserve the right to check further on the EEC duty, of course.

Mr. FRENZEL. We are going to keep the record open here, and I would ask unanimous consent, Mr. Chairman, that the gentleman be allowed to supply material for the record.

Mr. CARLISLE. May I go on to a broader point. In my belief, the American lead industry is a highly efficient industry. We at St. Joe pride ourselves on being among the most efficient lead producers in the world. So why are we down here quibbling, you might say, about whether the duty should be 3½ percent or 1.0625?

The basic problem is that we are looking down the road. Our guess is—and some of my colleagues may disagree with me—my guess is that all of the lead smelters in the United States are going to have to be replaced by the end of this decade employing technology that has not yet been developed. There will be a scramble for capital. That is what we are concerned about.

I want to come back, Mr. Moore, to a point that you asked of one of the administration witnesses. I don't want to kid you. The lead producers—at least our company—have made pretty good money in the last couple of years on lead. There is no secret about that. We are proud of it. The problem is that you have to make it when the Sun shines, because you go into a period where we are now and your profits drop off sharply.

The second point is that we have to probably reconstruct the lead smelting industry in the United States over the course of this decade and accumulate the capital to do it.

Mr. FRENZEL. I would simply comment that we have no reason to negotiate lower lead rates than those industralized countries because we don't export to them. So what do we care what it is?

Mr. WICKHAM. May I comment on the profitability? There are, as Mr. Carlisle mentioned, two separate types of companies in the primary lead industry. Ours is what is referred to as a custom smelter. In that regard we buy concentrates—probably 65 percent of ours are purchased on the outside—and pay the going lead metal price less some fee, which is our fee for processing it. So the profitability, at least of

our own company, is not directly related to the increase in price that you see posted by Metals Week.

Mr. FRENZEL. Thank you for making that clear.

Referring to your chart 3, I notice you have an interesting deflator index there which makes it look as though the price of lead were quite stable. Is it not, however, true that, for instance, in 1972 we are talking about 15-cent lead; in 1975, 20-cent lead; in 1977, 30-cent lead; and by last October, 63-cent lead; today, 50-cent lead? So those are real price increases?

Mr. CARLISLE. Those are real price increases. Our prices have gone up, there is no denying that, just the way prices of everything else, including the batteries, and, I assume, tetraethyl lead has gone up.

Mr. FRENZEL. I don't think there is anything sinful about making a profit. I am glad you have. I hope you make a lot more. I don't think you need the extra protection which, I believe, the ad valorem rate gives you.

Mr. RUPPE. Isn't it true, though, that the additional lead tariff has not substantially increased the prices of batteries? In fact, 15 percent of the lead consumed in the United States is imported into the United States. There are very few batteries imported but yet a good deal of lead is imported in the United States.

It would seem to me that, on the basis of competition, on the basis of the fact that lead is imported and batteries aren't, they would be the ones, quite honestly, who should be advocating an ad valorem tariff for our industry. It is the battery people who don't have outside competition who should want to go back to the straight line tariffs of 1975 because they are the ones who do not face the type of competition that we do here in our industry.

Mr. FRENZEL. I don't think the objection by the consumers is to the ad valorem style of assessing tariffs. I think the concern is the size of the tariff, which is out of proportion with the previous protection applied. They see this as an 80-percent increase in the duties that they have been paying.

Mr. RUPPE. But the battery cost has gone up by $22 and the lead tariff increase is only 15 cents a battery.

Mr. FRENZEL. I don't think there is any intention by them, or certainly by this panel, to indicate that the lead producers are the sole cause of the increase in the price of batteries. I think the allegation is that, if this bill passes, we can save $21 million for the consumers. And if that is not true, then somebody ought to comment.

Mr. RUPPE. Again, if the tariff were changed, even on batteries, to straightline tariff of 5 years, you would save many more millions because of the vast increase in the price of the product.

Mr. FRENZEL. The difference in the two cases is the change in the higher amount of tariff that will have to be paid. This has skyrocketed and the others have been less substantial.

Mr. RUPPE. The dollar amount would have had to increase on batteries by over 100 percent. The lead tariff may have been increased by 70 percent. But the mathematics works out that the battery went from $16.85 to $38.89. Those are our figures, and while I can't substantiate them here, but that is over a 100-percent increase.

Therefore the duty on batteries, which is an ad valorem rate, has certainly risen probably by well over 100 percent and substantially in

both percentage terms and, of course, vastly in terms of dollar amount over the increases for lead.

Mr. FRENZEL. In what time frame?

Mr. RUPPE. 1975.

Mr. FRENZEL. If you want to bring in a bill for reduction of duty on batteries, I will be glad to consider it. But I was not aware that was the business before us.

Mr. CARLISLE. Could I add a word on this, a friendly word, because certainly the people behind us are really friends. We know them well. I want to add to what Phil Ruppe has been saying. You have $1.70, by my calculation, of additional duty on batteries. If you take that and multiply it by 70 million batteries, roughly the market, then you have well over $100 million.

I find it hard to understand, just as my colleagues do, why we should be worrying about the $20 million. Why don't we worry about the $100 million?

Having said that, am I advocating a reduction in the battery tariff? No, I am not. If they think that is the kind of help they need, we, as suppliers to them, of course, are not going to come here——

Mr. FRENZEL. Mr. Chairman, I have used a good deal more time than I should have. I suggest to Phil—you indicated that you are not sure we should change these things once negotiated—I am informed that the administration will shortly send up to us a dozen and a half requests for changes in the tariff rate because of unintended effects which it did not anticipate when we implemented the MTN tariff changes. This is simply another example. The one that the committee is talking about is not unique; it is one or a number.

Mr. RUPPE. Quite honestly, AMAX has always been a supporter of free trade, so we are in a kind of peculiar position. I would say, as a final analysis, that AMAX is concerned about the equities involved.

You know, at a time when we certainly have been suffering tradewise around the world and at a time when we have just concluded MTN negotiations, it is, in a way, difficult for our people to accept unilateral cutting of the American tariff below what is at least the published figure in Europe and substantially below what is certainly the fact in Japan. It is as much a question of equity with us as anything else.

Mr. FRENZEL. Thank you.

Mr. VANIK. Mr. Moore.

Mr. MOORE. Imported lead is 15 percent. What was it 5 years ago, 3 years ago?

Mr. CARLISLE. It has been running about that level. It fluctuates some. Fifteen percent is a fairly good benchmark figure. Sometimes it gets above that; sometimes it runs below, Mr. Moore.

Mr. MOORE. Is there any concerted effort by our suppliers—Canada, Mexico, Peru—to try to expand that market? Are they dumping it?

Mr. CARLISLE. First of all, there has not been much expansion of lead capacity around the world, because, I think, the producers in this country and abroad, too, have not been very optimistic about lead's future, although there have been a couple of expansions announced recently. That is point 1.

Mr. MOORE. Where would those expansions be?

Mr. CARLISLE. There are two expansions taking place in Missouri.

Mr. BERGIN. ASARCO has announced expansion of a new mine in Missouri, a $77 million expenditure. That mine should be in full production in 1984.

Mr. CARLISLE. The Kennecott Corp., which is a miner of lead and not a smelter of lead, has also announced a mine expansion in Missouri. There are some other modest expansions here and there. There has not been a great deal of expansion.

Mr. MOORE. Will expansion be expansion of total capacity over a time period or will it be opening up a new mine or replacing one that is playing out?

Mr. BERGIN. In our case it is a brandnew mine which we are opening up which has not been opened. That will be additional lead mine capacity in the United States. Kennecot's mine is in addition to its current Ozark mine. So that, too, will add to U.S. mine production.

Mr. MOORE. Assuming that the economy eventually gets back to normal, will these expansions be able to find a market for their lead in this country?

Mr. CARLISLE. Presumably those expansions will. If the economy is strong, presumably all of the lead produced in the United States will be able to find a home. However, Mr. Moore—and I would like to emphasize this point—if at such time as major expansions come in, if the lead market is very weak you could see then some closing of capacity.

This has happened, for example, in the zinc industry. We have lost half of our zinc industry. My company just shut down the largest zinc smelter in the United States in December, partly because over a period of years not sufficient attention was paid to problems like this. This is the reason perhaps we seem to you unduly sensitive.

I would like to make a further point about the lead market. You asked about dumping. Yes, there has been dumping in the past. The company of my colleague on my right brought and won a dumping case against Canada and Australia, I believe it was, about 5 or 6 years ago. Subsequently that dumping finding was lifted. In other words, there are good times and there are bad times; that is all we are saying.

Mr. BERGIN. Congressman Moore, you asked a question earlier on imports. I have run a calculation very roughly. I will give you two figures. In 1974, a fairly good economic year, the imports amounted to 3.5 percent. In 1967 they were 28.3 percent. The only significant part is that, when business is good abroad, we don't see the lead here. When business is poor, the lead comes in here. This U.S. market is, without question, the freest market in the world. People can and do ship into this market.

Mr. MOORE. I keep hearing 15 percent. I am trying to determine: Do you have to have this tariff to protect you from predatory competitors overseas?

Mr. CARLISLE. Yes; in times of market softness, we need at least 3½ percent. Frankly, I think we need more than that.

Mr. MOORE. Does the history of your business show that?

Mr. CARLISLE. Yes, sir.

Mr. MOORE. You mentioned one case of dumping. This is not the same kind of thing about which we hear people complain with respect to the Japanese and higher technology, predatory pricing of television sets and whatever?

Mr. CARLISLE. If you go back over the history of this industry for roughly three decades, you will find that there is a history of instability in this industry and a history of importing surges. As my friend Mr. Bergin points out, the metal comes here when it is not needed; it is not here when it is.

Mr. MOORE. Is that part of a plot by foreign competitors?

Mr. CARLISLE. It is the way the market works.

Mr. MOORE. We have given tariff protection to people who are not subject to world economics but are subject to intentional effort on the part of foreign competitors to move in and take the market away, not because they have it to sell but because they want the market.

Mr. CARLISLE. The difference is that again we have these very heavy EPA and OSHA expenditures which put us at a competitive disadvantage. To the very best of our knowledge there are no standards anywhere in the world that are as severe as these.

Mr. MOORE. You heard the administration this morning indicate that was no part of the decision process. They said to me this morning it has nothing to do with their decisionmaking process on the setting of this tariff.

Mr. CARLISLE. I was chairman of an ISAC on nonferrous metals. I tell you that this problem of EPA and OSHA standards was very carefully pointed out to the administration. Regardless of what was said this morning, it did have an impact. I think it should have an impact.

Mr. MOORE. What is this ad valorem rate worth to you in dollars?

Mr. CARLISLE. One way of calculating it is: If you are talking about roughly seven-tenths of a cent a pound, which is $14 a ton, if you take the primary lead production in the United States of 600,000 or 700,000 tons a year, you can multiply that by $14. It is $8 or $10 million perhaps.

Mr. MOORE. You mentioned a moment ago that what you are really concerned about is that down the road, at the end of the decade, you will have to replace smelters.

Mr. CARLISLE. Right.

Mr. MOORE. The entire corporate base of America faces that, so that is a real problem, one that we have to address with some capital formation legislation. What does a smelter cost at today's prices?

Mr. CARLISLE. You get estimates all over the lot. It depends on what kind of technology. But you are in the tens of millions of dollars per smelter. We don't want to be held to this but I would say an absolute $100 to $200 million.

Mr. MOORE. We are talking about this bill being a 2-year bill. So by using your figures, the high side, we are talking about maybe saving your total industry $20 million over 2 years?

Mr. CARLISLE. Yes, sir.

Mr. MOORE. I fully realize that one smelter costs $100 million. We have some smelters we have to replace. This is a drop in the bucket. What you need is 10-5-3 rapid rate of depreciation or reduction in capital gains tax rates or reduction in corporate tax rates, something that is meaningful that enables you really to get the capital you have to have to rebuild.

Mr. VANIK. How are you going to guarantee that they will use that to build a smelter? They might use that to buy sugar.

Mr. MOORE. This protection alone is not going to rebuild smelters.

Mr. RUPPE. It will offer a measure of protection, and reduction in the tariff will certainly encourage lead to come into the United States rather than go to Europe or Japan, where the tariff is higher. So it will be a measure of encouragement to ship lead into the United States. It will be a mild profit depressant on the lead producers of this country and it will certainly make it somewhat—I am not saying 100 percent—somewhat more difficult to rebuild the smelters.

Mr. VANIK. Certainly in other parts of the world they are making some progress in dealing with the pollution problems. What is the difference between us and any recently built facilities abroad?

Mr. CARLISLE. First of all, I am trying to recall when the last smelter was built. I would say the last large smelter was——

Mr. BERGIN. I think it was Penoles in Mexico about 3 years ago. It was a replacement plant. The Penoles Co. in Mexico did build a new lead smelter and refinery.

Mr. VANIK. How would that plant relate to our code?

Mr. CARLISLE. It would not meet it, Mr. Chairman. It would not come close.

Mr. BERGIN. Most of the less-developed countries take the position that they can't afford to be concerned about pollution.

Mr. VANIK. When did we last build a smelter in the United States?

Mr. BERGIN. I think the last one was our Glover plant, which was built in about 1970, 1968.

Mr. CARLISLE. There were a couple of smelters built in the late sixties.

Mr. VANIK. What are the prospects for new ones to come onstream? Are there any prospects at all?

Mr. CARLISLE. You will get different answers from different companies. It depends on whether or not we can lick this technological problem that EPA and OSHA regulations confront us with. We are working on it. I am sure our competitors are. If we can get on top of those problems, then, I think, the chances that new smelters will be built are good.

Mr. VANIK. When I look at the steel industry, for example, and I go to Japan and see plants that meet the code there and they are way ahead of us, I wonder if there is any parallel.

Mr. CARLISLE. There is not. To the best of my knowledge there is no one that comes close to us in the severity of the lead standards. They are beyond reason. As Mr. Ruppe says, we don't protest reasonable standards. These have gone beyond reason. We have to figure out some way of complying with them if we possibly can. The technology is in the laboratory stage. That is where we are.

Mr. RUPPE. Actually, assuming for the moment that the Japanese do build a smelter as good as those demanded of the American industry, the fact is that in terms of tariff protection—I think their rate is now about 7½ percent in terms of duty and that will move in 8 years to 4.7 percent—granted they have the same requirement as we have in the United States, the protection afforded their industry to meet those sandards is substantially higher in Japan than it is in the United States.

Mr. VANIK. I was thinking of the problem we have with foundries. I wondered how long this country can maintain a viable foundry industry when they can go to Mexico at one-quarter of the labor rate.

Mr. CARLISLE. You have raised a very interesting point, because in Mexico now, over the border in Tijuana, secondary smelters—that is, recyclers of lead—are being set up because their pollution standards are very lax there.

Mr. Moore, could I come back to your questions for just a moment about the $20 million and what it is worth and it is a drop in the bucket and so on?

I think the point here is this, and I would like to emphasize what Mr. Ruppe said, and that is simply: If you cut this tariff now, as we are in a period of market softening, what it could well mean is significantly increased imports into the United States. So it could mean a lot more to us than $20 million. How much more, frankly, I don't know. You could get 16 different guesses.

Mr. MOORE. The hearing we normally have is when people come in and ask us for an increase—this is just the reverse—an increase in duty protection. Normally what they are trying to show is that they are the subject of predatory pricing by a foreign competitor or losing money and not making a profit. What I get from your testimony is that that is not your current situation but you are worried about the future.

Mr. CARLISLE. Very worried.

Mr. MOORE. We are heading into a recession and you see that. I look at your price increases and we have talked about the fact that in 1976, the price of lead was 23.1 cents per pound. I don't think you have increased your profits. Your cost has obviously increased.

Mr. CARLISLE. I agree our costs have gone up in the last couple of years.

Mr. MOORE. I think what the administration is telling us is that when they settled for the 1976 prices, the basis on which to apply this percent, they didn't know what was going to happen to the price of lead. They don't now want to unilaterally cut it, because they want to get something out of Mexico or Canada for it.

Mr. RUPPE. I am not an expert. Isn't it true there are many items in this country that are taxed on an ad valorem basis and therefore the bulk of them in penny terms have increased in recent years? So if this circumstance changed for our industry, we are not unique, whether it is the automobile guy or the battery producer or a thousand others. Those industries are protected by ad valorem——

Mr. MOORE. The decision we have to make is like cutting the Federal budget. Everybody is getting cut and should be. It may well be we ought to address every single one of these ad valorem rates to bring all those who don't need protection down to the level where they do need it.

Mr. RUPPE. I think it is pretty well agreed upon that the costs to the American producers are not less than to the other producers of this world, Japan and the European Economic Community. From our company's point of view what we would like as a bottom line be placed in the same competitive position as other countries whose cuts are not more than ours. If the European Community or Japan cuts the tariff down and we can stay in relative terms competitive with them from AMAX's point of view, fine.

Mr. MOORE. We realize our tariff rates for foreign countries are not determined by what everybody else does. If they buy more of our

product, we might lower our tariffs further. The administration is saying, now don't pass this bill, just give us a chance to get something from Mexico, Peru, or Canada for it.

You gentlemen have been candid. I appreciate that. If I were in your position I would be doing the same thing.

[The following were subsequently received:]

THE BUNKER HILL CO.,
Chicago, Ill., March 20, 1980.

Hon. CHARLES VANIK,
House of Representatives,
Washington, D.C.

DEAR MR. VANIK: On March 17, 1980, the writer appeared before the House Subcommittee on Trade, in opposition to HR 6089, the lead tariff bill.

Subsequent to that date, I read an article in the March 4 edition of "Metal Bulletin" quoting you as saying that, in your opinion, "Congress was 'prepared to move unilaterally to protect—in the rawest sense of the word—basic, core American industries' ". Since the primary lead producing industry is a basic, core industry, I was elated to see this item in print (copy attached).

During the above-mentioned Subcommittee meeting on HR 6089, the producers made several points, which deserved and received consideration. There were two other points which I felt needed further clarification.

They are:

1. The primary lead producing industry is composed of two separate sectors. These are the "fully-integrated" producers and the "partially-integrated" producers. Basically this means that certain producers (fully-integrated) mine all of their own smelter input feed. On the other hand, partially-integrated (or custom) producers mine only part of their input feed. Bunker Hill is a partially-integrated producer, purchasing approximately two-thirds of its concentrate feed. Concentrates are purchased on the basis of current metal values less a "treatment charge." Therefore, the custom smelter does not participate profit-wise in price increases to anywhere near the extent of the fully-integrated producer. However, the custom smelter is still subject to all the same costs associated with the new EPA and OSHA legislation.

2. In searching for concentrates (i.e., concentrated ore) to purchase, many times we must bid on these outside of the continental United States. When brought to the U.S., we must pay an import duty on the lead concentrate of 0.75 cents per pound of contained metal. The United States is the only country which charges such a duty.

This then causes the custom smelter a two-edged disadvantage. We are less able to compete on international markets for concentrate purchases as we have to pay a duty when receiving them. At the same time, some of those same countries, with better bidding strength (due to zero concentrate duty), can ship the refined metal into the U.S. at a lower cost than we can ship to their country as a result of a lower U.S. lead metal tariff, the size of which HR 6089 would reduce even further.

These points, and those presented in testimony on March 17, 1980, by all the U.S. Primary Lead Producers, in my opinion, argue strongly for rejection of HR 6089.

Your consideration of this matter is sincerely appreciated.

Very truly yours,

G. A. WICKHAM,
Vice President—Marketing.

Attachment.

[From the Metal Bulletin, Mar. 4, 1980]

VANIK: STATE AID FOR US STEEL

A masive programme of federal loan guarantees for the US steel industry was proposed by Charles Vanik, chairman of the House of Representatives Subcommittee on Trade, at last week's OECD steel symposium in Paris. Vanik said he thought the Congress was "prepared to move unilaterally to protect—in the rawest sense of the word—basic, core American industries".

Vanik envisages a loan guarantee programme similar to the Reconstruction Finance Corporation which was used to keep "core industries" afloat and to build

up new industries during the 1930s and early 1940s. Vanik thought Congress would support relief for the US steel industry and for other basic industries. He said Congress would back him in his attempt to ensure that imports did not destroy the domestic steel industry's efforts to replace capacity and to modernise. He called on the symposium to support a strong US steel industry "as an essential part of the credible defence of the western democracies".

In suport of his call for federal loan guarantees, Vanik pointed to the loan guarantee of $1,500m for ailing carmaker Chrysler which, he said, was unlikely to be used since the very allocation of a federal loan guarantee had restored public sector confidence in the company. "A similar programme for the steel industry, designed to accelerate the installation of energy saving devices . . . and to meet the costs of pollution control devices, could be an important new source of capital, with minimal government interference and probable profit to the indutsry", Vanik opined. Recent US federal loan guarantees (which have caused considerable controversy) have gone to Wheeling-Pittsburgh for a new rail mill, to Phoenix Steel for a plate mill, and to Jones & Laughlin for pollution control equipment.

While US steel modernisation programme was under way, Vanik thought there should be appropriate trade measures in force. He thought the trigger price mechanism could continue to be "a stabilising force", but a better enforcement of the TPM was required, and the possibility of a second TPM level for European producers should be considered. [This idea has been criticised as being too cumbersome—Ed.]

If the US Steel anti-dumping suits were filed, "there is no legal obstacle to the continued operation of the TPM in such circumstances." Vanik said he was urging the administration to continue the TPM. There is reported to be widespread support in Congress for continuation of the TPM after the suits have been filed, even though the government has said it is seriously considering its suspension (and Korf Industries is mounting a legal case against the suspension—page 36).

Vanik said he found it difficult to chastise the major steel companies for resorting to anti-dumping cases, but the motives of one or two companies who were setting our purposely to render the TPM redundant. "Is there a desire to force some sudden bankruptcies and thus reduce competition?". Vanik wondered. And he queried "what will happen to the western US market? Will they use the resulting confusion to precipitate massive layoffs at older plants, rather than seeking to modernise and adjust in a more orderly and creative manner?" He warned, however, that "while vigorous enforcement of the trade laws will not alone ensure the modernisation of the American industry, lax enforcement will ensure the gradual withering of the industry".

In time, Vanik felt, the TPM should come to an end, and advanced "as an idea for further, discussion" the development of "some clearly understood indicators of a steel downturn for each country. This could trigger a special awareness among all trading parties of the dangers of market disruption and "to the need to avoid increasing market share or lowering price in a manner which would exacerbate injury". He felt some form of automatic action should be "placed on stand-by until called for", in order to remove some of the unnecessarily destructive features of temporary overcapacity in the steel cycle". Vanik assured the meeting that, "as far as I can gather", the USA did expect a "considerable portion" of its market to be supplied by imports "now and in the foreseeable future".

ST. JOE MINERALS CORP.,
New York, N.Y., March 31, 1980.

Hon. CHARLES A. VANIK,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN. During the discussions on H.R. 6089 last Monday, March 17, there appeared to be some confusion as to the duties charged by our major trading partners on unwrought lead entering those nations. The EC tariff was quoted to be 2.1 percent ad valorem and the Canadian tariff was still under question. We have done further research on those tariffs and the following paragraphs detail our findings.

The tariff currently in force by the EC is 3.5 percent ad valorem. This tariff was not cut during the recent round of multilateral negotiations and is not scheduled for reduction in the near future. This 3.5 percent ad valorem rate is the rate for most-favored nations, similar to our Column I rate of duty.

However, the EC currently does offer different rates to various other European countries. Portugal and Greece may ship lead into the Community duty-free. Spain is currently assessed a 2.1 percent ad valorem rate, which will drop to zero when Spain becomes a full member of the Community. The EC also offers European Free Trade Association (EFTA) members zero-duty when shipping unwrought lead to the United Kingdom, Ireland and Denmark. When shipping unwrought lead to other EC nations, EFTA nations are charged a 3.5 percent duty up to .26 units of account per one hundred kilograms. The EC also provides reduced rates for developing nations which are party to the Lome Convention. This is similar to our Generalized System of Preferences.

In any case, it is important to bear in mind that those nations receiving preferential tariff treatment are not major suppliers of lead to the EC. The major suppliers such as Canada, Australia and Mexico encounter a 3.5 percent tariff barrier. If the United States lowers its duty further, those important suppliers will divert lead away from the EC into the U.S. market whenever lead is in oversupply, as is now the case.

There is still confusion as to whether the Canadian tariff is zero or 4.9 percent ad valorem being reduced to 4 percent by 1987. Our information indicates that old, scrap lead, in any shape or form, entering Canada is assessed no duty while unwrought lead in its primary form of bars or sheets is charged the higher rate. Since the 3.5 percent ad valorem tariff on unwrought lead entering the United States is on primary shapes but not scrap, we believe that the comparable Canadian rate is the current 4.9 percent ad valorem duty.

Regardless of what the Canadian tariff is, the important point is that Canada imports very little lead metal. In fact, Canada is an important exporter of lead.

I appreciate this opportunity to present this additional information and am taking the liberty of sending copies of this letter to the other subcommittee members present during our testimony.

Sincerely,

CHARLES R. CARLISLE,
Vice President.

Mr. VANIK. I thank the panel. We appreciate your time.

The next bill is H.R. 5464, introduced by Mr. Frenzel and Mr. Rostenkowski, to amend the Tariff Act of 1930 to permit drawback for imported merchandise that is not used in the United States and is exported or destroyed under customs supervision.

Mr. Kersner, your entire statement will be printed in the record.

STATEMENT OF STEVEN P. KERSNER, COUNSEL, ACCOMPANIED BY PAUL STEIN, VICE PRESIDENT, DATA GENERAL CORP.; AND FRANK GERVAL, MANAGER, CUSTOMS ADMINISTRATION, CONTROL DATA CORP., ON BEHALF OF THE JOINT INDUSTRY GROUP

Mr. KERSNER. Mr. Chairman and members, my name is Steven B. Kersner, a member of the law firm of Stein, Shostak, Shostak, & O'Hara. My firm specializes in U.S. customs and international trade matters. I am accompanied by Mr. Paul Stein to my right, vice president of manufacturing for Data General Corp., and Mr. Frank Gerval, manager of Customs Administration for Control Data Corp.

We appear before this subcommittee as members of the Joint Industry Group. The Joint Industry Group represents various organizations and corporations. A list of those organizations and corporations is attached to our statement.

During the past several years the Joint Industry Group has worked with this particular subcommittee on various customs-related issues. Our members have an ongoing interest in simplifying and improving the U.S. customs system. It is with this in mind that we wholeheartedly support H.R. 5464 which will expand, simplify and improve the U.S. customs system.

H.R. 5464 is essentially an expansion of the U.S. customs drawback procedures. "Drawback" can be simply defined as refunding of tariff duties, taxes and fees paid for imported articles when they are subsequently exported. The theory underlying the granting of drawback is that it encourages production of articles for export in the United States, thus increasing our foreign commerce as well as aiding American industry and labor.

Most countries have systems of drawback which vary in scope and nature. However, the U.S. drawback system as compared with those of our chief trading partners, principally the EC countries, Canada, Japan, and Australia, is more limited. The U.S. drawback provisions are found in section 313 of the Tariff Act of 1930. In essence the U.S. drawback laws now presently provide that imported merchandise must be subject to a manufacturing process or be rejected as not conforming in order to qualify for drawback.

H.R. 5464 is a bill which would expand the U.S. law by permitting drawback on merchandise which is exported in the same condition as imported and is not used in the United States. Presently there are various customs procedures and mechanisms which exist whereby merchandise can be entered duty free and then exported. These are temporary importation bonds, bonded warehouses and foreign trade zones. For various reasons, some of which will be expanded upon by the members of this panel, these procedures have proven impractical for most U.S. firms to use.

Essentially a U.S. firm must know at the time of importation exactly where it intends to sell the goods and what it intends to do with the goods. In addition, these procedures tend to be costly and entail other restrictions which make it difficult for most U.S. firms to use them.

H.R. 5464 will make drawback available in situations where a U.S. firm does something less than manufacture the imported article before it is exported. This is an expansion on 313 (A), (B), and (C). It envisions allowing the merchandise to be tested, cleaned, repacked, or inspected in the United States and be shipped out. The bill further states the article may not be used in the United States and qualify for drawback. The bill provides that the doing of incidental operations to the merchandise which is imported would not change its condition or constitute use of that merchandise.

The bill specifically states that the testing, cleaning, repacking, and inspecting would not qualify as a use. The definition of the term "incidental operation," and how this bill will be administered, are critical. We would like to recommend to the subcommittee that the following operations also be considered incidental: Marking, packing, painting, polishing, and other operations of such a nature that do not change the condition or constitute use of the merchandise. These examples which we offer are in addition to the four operations which are specifically mentioned in the bill.

We offer these limited examples as just a sample list and we do envision other types of operations which would permit the merchandise to qualify for drawback.

Turning to the administration of this bill, we would note that customs already administers various drawback laws through use of documentation and audit procedures. We believe that the expanded drawback system could easily be integrated into the existing administrative

procedures and thus not entail any additional customs efforts or manpower.

We will briefly address now the question of revenue impact.

We would note that it is much too difficult to estimate the amount of revenues that might either be lost or gained as a result of this legislation. We believe, however, that whatever revenue losses there might be, if any, will more than likely be significantly offset by the revenues from increased economic activity. The increased economic activity would produce greater taxable corporate and individual earnings which might otherwise be foregone.

The Joint Industry Group believes that there are several significant benefits which will result from the enactment of H.R. 5464. The bill would increase the competitiveness of U.S. exports, as it would allow firms to more efficiently and effectively serve their foreign and domestic customers from a U.S. base. These cost savings would translate into more competitive export prices. Similarly, the bill would enable the United States to increase its volume of exports and therefore aid the balance-of-trade problems.

We also envision the bill as increasing U.S. jobs. This will be a direct result of many U.S. firms expanding or establishing distribution centers here in the United States from which they can service their worldwide markets. Significantly also we feel that the bill would generate long-term increases in U.S. tax revenues because of the increases in taxable corporate and individual income.

For these reasons, and those that appear in our statement, we strongly recommend that the Congress enact the bill. Mr. Stein and Mr. Gerval will now comment from the perspective of their particular companies as to how this bill will benefit them.

[The prepared statement follows:]

STATEMENT OF THE JOINT INDUSTRY GROUP

I am Steven P. Kersner, a member of the law firm of Stein, Shostak, Shostak, and O'Hara. My firm specializes in U.S. Customs and international trade matter. I am accompanied by Mr. Paul Stein, Vice President of Manufacturing for Data General Corporation and Frank Gerval, Manager, Customs Administration, Control Data Corporation.

We appear before this committee as members of the Joint Industry Group which represents the following organizations and the businesses they represent:

The Chamber of Commerce of the United States.
The Air Transport Association of America.
The American Electronics Association.
The American Importers Association.
The Cigar Association of America.
The Computer and Business Equipment Manufacturers Association.
The Council of American Flag Ship Operators.
The Electronics Industries Association.
The Foreign Trade Association of Southern California.
The Imported Hardwood Products Association.
The International Committee of the Los Angeles Area Chamber of Commerce.
The Motor Vehicle Manufacturers Association.
The National Committee on International Trade Documentation.
The Scientific Apparatus Makers Association.

The Joint Industry Group has worked with this Subcommittee on several customs-related issues, beginning with the Customs Procedural Reform and Simplification Act in 1977, and continuing with the development, successful negotiation and congressional acceptance of the Customs Valuation Code of the Multilateral Trade Negotiations in Geneva. Our members have an ongoing interest in simplifying and improving the U.S. customs system. It is with this in mind that

we wholeheartedly support H.R. 5464 to expand, simplify, and improve the system of U.S. duty drawback.

CURRENT DRAWBACK AND OTHER PROCEDURES

Drawback is the refunding of tariff duties, taxes, and fees paid for imported articles when they are subsequently exported rather than used in the country of importation. The theory underlying the granting of drawback is that it would encourage the production of articles for export in the United States, thus increasing our foreign commerce and aiding American industry and labor. Most countries have systems of drawback which vary in scope and nature. However, the U.S. drawback system as compared with those of our chief trading partners (The EC countries, Canada, Japan and Australia), is more limited.

The U.S. drawback provisions are presently found in section 313, the Tariff Act of 1930, as amended. Drawback is allowed upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise in an amount equal to the duties paid upon the merchandise so used, less 1 percent. Drawback is permitted also upon the exportation of an article manufactured in the United States with the use of domestic material which is of the same kind and quality as the imported material. Drawback is also allowed upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid, and which goods have been entered or withdrawn for consumption and returned to customs custody for exportation within 90 days after release from customs custody.

In essence, the U.S. drawback law requires that imported merchandise be subjected to a manufacturing process or be rejected as nonconforming. If a firm imports merchandise for anything other than manufacture or production, and wants to export, or be able to export them without absorbing the duty cost, he must resort to one of several other Customs mechanisms. These mechanisms are the Temporary Importation Bonds (TIBs), the Customs Bonded Warehouses, and the Foreign Trade Zones.

There are a number of problems with using these procedures instead of drawback. First, a U.S. firm must know at the time of importation exactly where it intends to sell the goods and what it intends to do with the goods. Second, these procedures add to the U.S. firm's costs, and hence export prices. Third, these procedures entail other restrictions on what a firm can do to meet the needs of its foreign and domestic customers.

The TIBs allow firms to import merchandise without paying any duty at all. However, it leaves the firms with little flexibility to deal with changing circumstances in the market. First, it requires that the firm identify precisely, at the time of importation, which goods in a particular import shipment will be exported. Second, the firm must export that merchandise within the statutory time period, usually one year. However, if that merchandise is not exported within that time period for whatever reason, a penalty equal to two times the otherwise applicable duty is levied against the importer. There are a myriad of different TIBs, all with their particular restrictions as to what the importer may do with the product. The following are examples of the utilization of TIBs: exhibition, repairing/altering/processing, samples to elicit orders, etc. We believe that TIBs are complicated and restrictive to a degree that discourages many companies, especially smaller ones, from using them. But, the real problem is that without clear advance knowledge of exactly which articles are to be exported and which will remain in the United States, the temporary importation bonds are not a practical mechanism.

Bonded warehouses are also available to U.S. firms. Essentially. there are the following types of bonded warehouses: storage, manipulation, and manufacturing. They allow U.S. firms to import merchandise without having to pay duty. However, in many cases, the bonded warehouses are not practical alternatives for the following reasons: (1) The importer must know prior to importation exactly what he intends to do with the merchandise; (2) Once the merchandise is in the warehouse, he has limited access to it, and cannot remove the merchandise for any reason without paying duty on it, except when it is sent out for direct export; (3) The warehouses are expensive and users must rent space and pay the services of bonded warehousemen and customs employees who must supervise all activities with respect to the merchandise; (4) Each owner of these warehouses may restrict the type of operations that can be performed in the

warehouse; and (5) A firm needs to have a proper bonded warehouse accessible to it, which is often not the case, especially outside major metropolitan areas.

The foreign trade zones (FTZ) are also available, but they entail basically the same types of restrictions encountered with the bonded warehouses: limited access, pre-planning, costs, availability, etc. Availability is more of a problem with respect to FTZs because there are only a limited number of FTZs in operation today across the country.

In addition to the above discussed problems an importer faces if he wishes to utilize these alternative procedures, these procedures do not provide relief for the firm which imports merchandise for domestic sale, discovers there is no domestic demand for it, and therefore must return it to its foreign source, or sell it in another foreign country to avoid significant financial loss.

HOW H.R. 5464 WOULD AMEND CURRENT LAW

H.R. 5464 would amend 19 USC 1313 to make drawback available in situations where a U.S. firm does something less than manufacture the imported article before its export, such as testing, cleaning, repackingg, inspecting, and so on. Of course, the imported article could not be "used" in the United States and still qualify for drawback. It therefore, in most cases, would allow U.S. firms the choice of avoiding resort to the use of the cumbersome procedures discussed above; and it would give U.S. firms more flexibility in meeting domestic and foreign customer demands—without having to pay non-refundable duty on goods that are not used in the United States.

H.R. 5464 would provide for drawback on goods that are exported in the same condition as they were imported. It also would provide drawback on merchandise with respect to which incidental operations are performed, i.e., operations that do not amount to manufacture or production for purposes of qualifying for drawback under present law. Under the bill, such operations would not amount to a "use" of the article in the U.S. which would automatically eliminate the ability to get drawback.

Simply stated the legislation would allow:

(1) Exporters the option to do internally (and therefore more efficiently) certain operations that they cannot do under present law and still receive drawback;

(2) Exporters to receive drawback in those instances in which the merchandise imported was not used and they were unable to anticipate the need to export.

At this point, we would like to note that the bill does not define the term "incidental operation." Therefore, it is unclear what operations performed to the imported merchandise would permit the merchandise to qualify for drawback. The Joint Industry Group believes it would be beneficial if this Subcommittee were to include in its report on H.R. 5464 a sample list of operations which it believes are incidental and, therefore, covered by this legislation. We would like to recommend the following operations which we would consider incidental: marking, packing, painting, deburring, polishing, fumigating, and sterilizing. These examples would be in addition to the four operations specified in the bill. We emphasize that this is only a sample list and we envision many similar type operations which would permit merchandise to qualify for drawback. We would welcome the opportunity to work with the Subcommittee staff regarding the development of such a sample list. We believe that such a clarification would provide U.S. exporters with the certainty needed to make business decisions.

ADMINISTRATION

We believe that this new law could be administered with little difficulty. The question of administrative ease would depend upon what documentation or procedures the Customs Service would require to document the importation, the subsequent exportation, and the fact that the merchandise was not used in the United States. Customs already administers the present drawback law through use of documentation and audit procedures. The expanded drawback system could be easily integrated into these existing administrative procedures.

REVENUE IMPACT

While it is too difficult to estimate the amount of revenues that may be lost or gained as a result of this legislation, we believe that whatever revenue

losses there might be, will most likely be significantly offset by the revenues from increased economic activity.

We believe that in allowing more flexibility for export operations in the United States, the bill would encourage the expansion of operations here in the United States. This increased economic activity would produce greater taxable corporate and individual earnings which might otherwise be foregone.

In many cases, this legislation will result in firms paying some duty where presently they pay none at all, either because they use TIBs, bonded warehouses and/or foreign trade zones. The Treasury would retain 1 percent of the duty collected, and would, significantly, have use of these funds, interest free, for up to 3 years. This would be particularly true for the larger firms.

BENEFITS FROM H.R. 5464

The Joint Industry Group believes a number of significant benefits will result from enactment of H.R. 5464:

(1) *Increase competitiveness of U.S. exports.*—The bill would allow firms to more efficiently and effectively serve their foreign and domestic customers from a U.S. base. These cost savings translate into more competitive export prices. For example, firms would have the flexibility to export products (without having to absorb the duty cost) originally assigned to a U.S. inventory that are needed to serve their foreign customers and compete in world markets. Likewise, firms could sell goods originally planned for export to domestic customers without paying a penalty as is now the case with TIBs. The bill would allow firms to export or return more economically inventory, or other imported goods for which there has turned out to be little domestic demand. It would allow firms to reduce their transportation (and hence energy) costs because they would be able to consolidate shipments of multiple items to a distribution or operations point in the United States without having to worry about the restrictions in TIBs, bonded warehouses, and foreign trade zones.

(2) *Increased volume of U.S. exports.*—To the extent more import/export operations are expanded in the United States rather than in other countries due to the increased drawback flexibility, exports would be expanded. Exports would also be encouraged because U.S. firms would not have to absorb the duty cost if they decide they need to export a good rather than sell it domestically.

(3) *Increased U.S. jobs.*—By greatly simplifying and expanding the availability of drawback, the bill would encourage firms to establish, maintain, or expand their distribution centers and other operations here in the United States. This will, of course, mean more jobs for U.S. workers, especially in the areas of distribution.

(4) *Longer term increase in U.S. tax revenues* through the increased economic activity that results in more taxable corporate and individual income.

CONCLUSION

For the reasons above, we strongly recommend that Congress enact H.R. 5464. We thank the Subcommittee for this oportunity to testify, and would be pleased to answer any questions you might have.

THE JOINT INDUSTRY GROUP

The Air Transport Association of America which represent nearly all scheduled airlines of the United States.

The American Electronics Association which has more than 1,200 electronics companies in 42 states. Its members are mostly small to medium in size, with more than half employing fewer than 200 people.

The American Importers Association representing over 1,000 companies, mostly small to medium in size, plus 150 customs brokers, attorneys and banks.

The Chamber of Commerce of the United States representing 89,000 companies, 1,293 trade associations, 2,600 state and local Chambers of Commerce and 43 Chambers of Commerce overseas.

The Cigar Association of America which includes 95% of all U.S. cigar sales and major cigar tobacco leaf dealers.

The Computer and Business Equipment Manufacturers Association including nearly forty members with 750,000 employees and $45 billion in worldwide revenues. Members range from the smallest to the largest in the industry.

The Council of American Flag Ship Operators which represents the interests of the American Liner Industry.

The Electronics Industries Association, its 287 member companies, which range in size from some of the largest American businesses to manufacturers in the $25–50 million annual sales range, have plants in every state in the Union.

The Foreign Trade Association of Southern California which represents 450 firms in Southern California in the import-export business.

The Imported Hardwood Products Association, an international association of 250 importers, suppliers and allied industry members. Members handle 75% of all imported hardwood products and range in size from small private businesses to the largest in the industry.

The International Committee of the Los Angeles Area Chamber of Commerce.

The Motor Vehicle Manufacturers Association, whose eleven members produce 99 percent of all U.S.-made vehicles.

The National Committee on International Trade Documentation, which includes many of the major U.S. industrial and service companies.

The Scientific Apparatus Makers Association, manufacturers and distributors of scientific, industrial and medical instrumentation and related equipment.

The U.S. Council of the International Chamber of Commerce, a business policy-making organization which represents and serves the interests of several hundred multinational corporations before relevant national and international authorities.

Mr. STEIN. Mr. Chairman and members of the committee.

My name is Paul D. Stein. I am vice president of manufacturing for Data General Corp., headquartered in Westboro, Mass.

I am here today to urge this committee to issue a favorable report on H.R. 5464. This legislation would amend U.S. customs law to allow for refund of duties paid on imports when they are subsequently exported even though they may have undergone only incidental operations while in this country. We believe this measure would be of great assistance to the electronic and computer industry in maintaining our competitiveness in world markets and helping us to grow further.

A little background on my company and this industry may be helpful in showing the importance of our trade performance to the U.S. economy.

The electronic industry is characterized by young fast growing firms that sell some 30 percent of their products overseas. My own company is only 11 years old with sales last year of $500 million. We are one of the world's leading maufacturers of small computers. We now employ 13,700 people, 11,000 of them in Massachusetts, New Hampshire, Maine, North Carolina, Texas, and California, and have sales and service offices throughout the country.

Our international sales last year amounted to $162 million or almost one-third of our revenues. Our growth in foreign markets has generally equaled our growth domestically. Roughly one out of every three U.S. jobs at Data General is reliant on this foreign trade. Except for the smaller firms that are now just expanding in overseas markets, this 1-in-3 ratio seems to be an industry average.

Our firm made approximately $70 million positive contribution last year to the U.S. balance of trade. A recent survey of just 328 companies in our industry showed a contribution of around $3.8 billion.

The point is that our success in international trade is crucial to our continued growth and job creation here at home. H.R. 5464 would eliminate one impediment to our competitiveness abroad. As you have heard today, manufacturers in Japan, Canada, Great Britain, and Common Market countries are allowed considerable flexibility when it comes to duty on products they import and subsequently export.

Under present law U.S. manufacturers do not enjoy the same flexibility. We are not able to recover the duty we pay on temporary imports unless they are manufactured or substantially altered while in the United States.

This literally adds 4.8 percent to our costs for many of our exports and subsequently reduces our competitiveness. Data General has reached a point in its growth where it must examine the various alternatives that are available and frankly we are hesitant about importing components that do not qualify for duty drawback. We do import circuit board products, 95 percent of which qualify for duty refunds because they undergo some manufacturing processes before being exported. But as our company grows we see significant future potential for bringing components into the United States for testing, packaging, repackaging and other incidental operations to imported merchandise which would be dutiable under current law before they are shipped overseas.

We would prefer to do this work in the United States because of the greater efficiencies and quality assurance that can be provided by our domestic operations. However, because such operations do not amount to manufacturing, they do not qualify for duty refund. Therefore, if we elect to do this work in the United States under current law, we must resign ourselves to increased cost either because we would have to pay nonrefundable duty on merchandise that never enters American commerce or because we would have to resort to the use of temporary importation bonds, bonded warehouses and/or foreign trade zones, each with their attendant costs.

The alternative to this is that we could simply drop ship this merchandise from one overseas point to another or establish an overseas distribution point that bypasses the United States entirely. In fact we are doing some of this already and it saves on list and freight costs. However, we would prefer to be able to bring these products into the United States to plants in North Carolina, Texas, and Massachusetts so they could be properly tested with the rest of the components in each computer system we sell.

In this way we can assure greater quality for our foreign customers and our operations here will continue to grow. Our ability to grow, create new jobs, and contribute to America's economic well being depends on how competitive we can be. It seems to us that passage of H.R. 5464 is one step Congress should take to offset these obstacles and assist American exporters. Thank you, Mr. Chairman.

Mr. GERVAL. Thank you, Mr. Chairman.

Mr. Chairman, my name is Frank Gerval. I am manager of customs administration for Control Data Corp., Minneapolis, Minn.

We would like to heartily concur with the remarks submitted by the Joint Industry Group and those made by Mr. Stein. I will add one brief example because I feel much of my testimony has been stated by the previous witness.

This is an example relating to the three customs mechanisms procedures which we now have in the form of temporary importation bonds, the customs bonded warehouses, and the foreign trade zones.

Control Data Corp. is a large multinational corporation but it is only able to take advantage of one of those three procedures, that

being the temporary importation bonds. The problem with the temporary importation bond is that the election to use it must be made at the time of importation and it is irrevocable. We don't have any flexibility in the bond because the products either have to be exported or destroyed, or double duty paid.

We believe that 5464 will give to the importing and exporting community of the United States the needed flexibility to compete in foreign markets. We urge adoption of the bill. Thank you.

Mr. GIBBONS. Thank you.

What you say makes good sense. I hope we can get the bill passed.

Mr. Vander Jagt?

Mr. VANDER JAGT. I too think it makes good sense. I find it a more efficient way of looking at duties on products that have never entered U.S. commerce. I think it will lead to increased competitiveness in our market.

Thank you.

Mr. GIBBONS. Mr. Frenzel?

Mr. FRENZEL. When the Government witnesses testified, one witness testified that he suggested two amendments: The first was a modification of the 3-year time period for drawback.

Would you comment on that suggestion?

Mr. KERSNER. The bill has a 3-year time limit. We would prefer to see that time limit remain; however, if to concur with our MTN negotiations the administration feels that 2 years is what we have to do, then we would not seriously or strenuously object to the reduction from 3 to 2 years.

Mr. FRENZEL. Good. I appreciate that statement. We are trying to review the agreements to see what the time period is. Frankly, none of us is aware of the 2-year requirement in the agreement, but we will find that out. I am glad to know of your attitude.

The other amendment they suggested was to confine the incidental operations in such a way so that there would be a duty levied in cases where these materials were used for testing purposes beyond the testing of the material itself.

Do you have any objection to that?

Mr. KERSNER. Well, as I understand their amendment, it is our opinion that it won't change the bill substantially as it was written. We didn't envision the bill encompassing the situation which they suggested anyhow.

We think the bill as written, and this suggested amendment, say essentially the same thing.

Mr. FRENZEL. Well, I would agree with you. And you have indicated a couple of processes today that apparently you think might be a part of the committee language. I am sure that between you and the Treasury and all of us here we can agree on something. I think it is quite often what you want to do. And we don't want to deny the Treasury any of its rightful revenues.

So I don't see a problem with the two Treasury suggestions. It is simply a matter of getting some agreement on it. I certainly would much rather have a bill to which they agreed. It isn't essential but it is nice.

I thank all of the witnesses for their testimony.

Mr. GIBBONS. The next panel is the Committee on International Trade Documentation headed by Mr. Donohue.

If you would come forward and identify yourselves and tell us briefly if you are for it or against it.

Mr. DONOHUE. We are for it, Mr. Chairman.

Mr. GIBBONS. Good. Don't talk it to death then. Put your statement in the record.

STATEMENTS OF JOSEPH F. DONOHUE, JR., COUNSEL, JOHN D. X. CORCORAN (INGERSOLL-RAND CO.), AND JOHN W. VAN BUSKIRK (C. J. HOLT & CO., INC.), ALL ON BEHALF OF THE NATIONAL COMMITTEE ON INTERNATIONAL TRADE DOCUMENTATION

Mr. DONOHUE. Thank you, Mr. Chairman.

We would appreciate having our statements put in the record.

I will briefly summarize the substance of my statement.

I am Joseph F. Donohue, Jr., a member of the law firm of Donohue & Donohue of New York City. My firm specializes in U.S. customs and international trade matters.

I am accompanied by Mr. John Corcoran, manager of customs and immigration of the Ingersoll-Rand Co. of Woodcliff Lake, N.J., and John Van Buskirk, president of C. J. Holt & Co., Inc., a customs brokerage firm in New York which specializes in drawback matters.

We appear before the committee as members of the National Committee on International Trade Documentation, which is also known shortly as NCITD, which is a nonprofit organization consisting of approximately 200 member companies who are involved in international trade.

The NCITD Drawback Committee is particularly interested in matters related to drawback under the customs law.

As indicated at the outset, we enthusiastically support H.R. 5464.

Briefly, the present drawback law does not accomplish what we intend H.R. 5464 to accomplish because it requires, in short, that there be a manufacturing operation in the United States. There are numerous instances, however, when merchandise is entered for consumption in the United States, duty is paid thereon, and for any one of several reasons it is thereafter exported, and it will not qualify for drawback.

We suggest that H.R. 5464 is intended to permit a refund in these types of cases.

Briefly, the basic goal of the proposed bill is to permit a refund of duty where merchandise is imported, not used in terms of its ultimate commercial objective, and is exported without having been changed in condition or it is destroyed under customs supervision.

The performing of incidental operations which do not amount to manufacture or production under the present drawback statute would not constitute a use within the meaning of the law.

What are likely to be some of the benefits from this proposal?

First there will be greater profitability in sales made to foreign markets and an increase in operations in the United States which are related to the handling of goods which will thereafter be exported.

As already indicated, the bill will permit a refund of duties when the merchandise is stored, packed, sorted, cleaned, labeled or sub-

jected to simple operations and is subsequently exported. Under present law the importer who enters his merchandise for consumption and performs these or similar operations would not recoup his duty on an export sale. He will now have an opportunity to do so and this will be an added incentive to do certain operations here which might otherwise have been done in foreign markets. Making such sales more profitable will lead to an increase in testing, packing, and other operations in the United States and will then increase the need for facilities and manpower to perform these jobs.

Second, the exportation of surplus merchandise or goods which are needed to complete a foreign order will be more profitable.

Under the present law a party having surplus inventory or merchandise which he is unable to sell for any one of several reasons will not be able to obtain a refund of duty if he exports the merchandise to a foreign country. The proposed bill would permit such a refund and will enable the U.S. exporter to offer his surplus goods at a price which is more competitive than it would have been if he had to include the cost of duties in his export sale.

Frequently such a sale is made under conditions which are likely to result in a loss in any event, and the loss is even heightened by the inability to recoup the customs duties.

An additional feature of this bill is that it will help in a situation where a foreign company is unable to complete a foreign sale and calls upon its U.S. affiliate to fill the order with imported merchandise from the U.S. stock of the U.S. company. The recovery of the duty already paid will make this export sale more attractive.

There are certain shortcomings in the present law which have already been alluded to which make this law, H.R. 5464, important. First the temporary importation bond procedures are not adequate. Merchandise can be imported under a temporary importation bond for testing, for processing or other similar purposes if it is known at the time of importation that the article will be exported. The temporary importation bond can not be used if, at the time of importation, there is not a bona fide intent to export the merchandise. If the importer intends to use or to sell the merchandise in the United States he will presumably enter it for consumption. If, after importation, he decides to export all or part of the merchandise he will have no procedure to obtain the duty already paid.

On the other hand if, at the time of importation, he plans to subsequently export the merchandise, he can post a temporary importation bond but if, thereafter, he does not export the articles he is subject to a penalty which is equal to double the duties which would have been charged in the first instance.

So without a clear knowledge in advance of exactly which articles are to be exported and which will remain in the United States the temporary-importation-bond procedure cannot be effectively used. In short, the temporary-importation-bond procedure affords the importer little flexibility which is needed for a change in market conditions.

A bonded manipulating warehouse may be used for cleaning or packing, sorting, or processing merchandise and it may be a practical mechanism if the importer knows in advance that he will be subjecting the articles to these operations and thereafter exporting them. However, the importer who determines after importation that he has an

opportunity to sell the goods in a foreign market and who has not put them in a bonded warehouse, would have no way to obtain the duties already paid. In addition, the need for customs authorities to be present during certain parts of the manipulating operations as well as the costs of bonding the facilities and compensating the customs officers subject the importer to substantial costs which sometimes can outweigh the duty savings.

A foreign trade zone involves the same type of restrictions and costs as the bonded warehouse, which add to the ultimate cost of exportation. In addition, of course, the importer who does not have access to a foreign trade zone at the time of importation or does not know he will need the foreign trade zone at the time of importation but thereafter seeks to export his merchandise would not be able to obtain the duty refund.

I think it is apparent that there is no inherent objection to refunding duties upon exportation of merchandise. The avenues currently available, however, are not adequate or practical for a large segment of the potential exporting community. H.R. 5464 would provide relief consistent with, but unavailable under, the present law.

The benefits extend beyond those to the importer or exporter. First to the extent that certain operations currently done abroad would be transferred to U.S. facilities. There would likely be an increase in the domestic labor force needed to perform these jobs. A reduction in unemployment and an increase in tax revenues could therefore also be anticipated.

Second, to the extent that there will be increased exportation of merchandise which is not now being exported, there will be an improvement in the balance of payments.

Third, there is a possibility that there will be an increased availability of customs personnel. Many of the jobs which are presently done in bonded warehouses or in foreign trade zones will be able to be done in the importer's own facilities. And to that extent it is likely to free up the customs personnel who now man the foreign trade zones or the customs bonded warehouses.

In conclusion, we support H.R. 5464 and we appreciate very much having had the opportunity to express our comments.

Now Mr. Corcoran will have a few remarks.

[The prepared statement follows:]

STATEMENT OF THE NATIONAL COMMITTEE ON INTERNATIONAL TRADE DOCUMENTATION

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee on Trade:

I am Joseph F. Donohue, Jr., a member of the law firm of Donohue and Donohue located at 26 Broadway in New York City. My firm specializes in U.S. Customs and international trade matters. I am accompanied by Mr. John D. X. Corcoran, Manager of Customs and Immigration of the Ingersoll-Rand Company of Woodcliff Lake, New Jersey and Mr. John W. Van Buskirk, President of C. J. Holt & Co., Inc., a Customs brokerage firm in New York City which specializes in drawback matters.

We appear before this committee as members of the National Committee on International Trade Documentation (NCITD), which is a non-profit organization whose members include large and small companies involved in international trade. A list of the membership is appended to this statement. NCITD conducts research and makes recommendations directed to simplifying and facilitating

international trade. Its subcommittee on drawback is particularly interested in assisting its members in problems in the drawback area, and coordinates its efforts with the U.S. Customs Service in any effort to increase the effectiveness and efficiency of the drawback program.

II. POSITION OF NCITD

NCITD supports H.R. 5464. As a matter of fact, as far back as 1977 the drawback committee discussed with the Customs Service the concept embodied by the bill and, as a result of these discussions, initiated steps to amend the drawback law. H.R. 5464 is a result of these efforts.

III. THE PRESENT DRAWBACK LAW

The present drawback law is set forth in Section 313 of the Tariff Act of 1930 (19 U.S.C. Sec. 1313). Briefly, drawback is a refund of duties which have been paid on imported materials. It will be granted upon a showing that imported material, or domestic material of the same kind and quality as the imported material, has been used in the production of an article in the United States which is subsequently exported. This is known as manufacturing drawback. Also, duties will be refunded as drawback on an imported article which is subsequently exported because it does not conform to sample or specification or is shipped without the consent of the consignee. This is known as "rejected merchandise drawback". Additional provisions for drawback are applicable to specific types of merchandise but are not pertinent here.

There are numerous instances, however, when merchandise is entered for consumption and duty is paid thereon, and for any one of several reasons it is thereafter exported from the United States but does not qualify for drawback under the present law. H.R. 5464 is intended to permit the refund of duty in many of such cases.

IV. PURPOSE OF H.R. 5464

H.R. 5464 provides in substance, that if imported merchandise (1) is not "used" in the United States and (2) is subsequently exported in the same condition as it was in when it was imported, or is destroyed under Customs supervision, the duties, taxes or fees paid thereon will be refunded. Exportation must occur within 3 years after importation. The basic goal of the law is to permit a refund of duties on merchandise which is imported, not used in terms of its ultimate commercial objective, and is exported without having been changed in condition, or is destroyed under Customs supervision. The performing of incidental operations such as testing, packing and cleaning and other operations which do not amount to a manufacture or production operation under the present drawback law, would not constitute a "use" within the meaning of the statute. An "incidental" operation connotes an operation which is subordinate, or of minor significance to the article's intended ultimate purpose. For example, a particular chemical may be produced with the intention of selling it for use as a catalyst. Prior to sale it is imported in bulk and repacked. "Using" it in the United States to be repacked would be a permissible use within the scope of this statute.

The exporter must also show that the merchandise was exported "in the same condition as when imported". This requires that the article not be changed in condition after importation and prior to exportation. The repacked chemical referred to above would not have changed in condition. However, an article which is imported in a solid state, for example, and exported as a liquid would not qualify.

V. BENEFITS OF THE PROPOSED LAW

1. *Increase in U.S. operations related to goods to be exported from the United States.*—This bill will permit merchandise to be imported, and assessed with duty, and then stored, tested, cleaned, repacked, inspected, labeled, or subjected to other operations. Upon exportation of the goods, the U.S. exporter will be entitled to recoup 99 percent of the duties paid. The disincentive to do these operations in the United States, resulting from the fact that the U.S. company has to now absorb the duty or include it in the export price, will be removed, and the merchandise will be more competitive in foreign markets. Under the present law the options are two: either have the operations performed abroad and thus avoid U.S. duty liability, or import the merchandise and perform the operations here and bear the cost of the duty. (These operations can frequently be done in the

United States through the use of a bonded warehouse or entry under temporary importation bond, but as will be explained later, there are costs and other restrictions that frequently make these avenues prohibitive or impractical.)

If these tasks are done in the United States, there are advantages in the areas of service, shipping, distribution and quality control leading to a greater opportunity to increase export sales. The removal of the duty burden would foster such work in the United States leading to the need for additional facilities and manpower. The increase in employment, and income taxes resulting therefrom, is apparent.

2. *Encourage the exportation of surplus merchandise or goods needed to complete a foreign order.*—The bill would permit an importer with a surplus of inventory, or merchandise which he is not able to sell in the United States for any reason, to export the merchandise and enter it into the commerce of a foreign country at a price which is more competitive than it would otherwise be if he had to recoup duties previously paid. Frequently such a sale is made under conditions which are likely to result in a loss in any event, and the loss is heightened by the inability to recoup the Customs duties. It sometimes happens that a foreign company is unable to complete a foreign sale and may call upon its U.S. affiliate to fill the order with imported merchandise which has been put in its U.S. stock. The recovery of the duty already paid will make the export sale more attractive.

VI. H.R. 5464 V. PRESENT LAW

As indicated earlier, in order to qualify for drawback under Section 313(a) or (b) the imported material, or a domestic substitute, must be used in a manufacturing operation. The operations which are intended to fall within the scope of H.R. 5464 are not manufacturing operations and therefore would not qualify for drawback under section 313(a) or (b). Furthermore, under Section 313(c), the exporter must show that the merchandise did not meet sample or specifications. A much broader category of merchandise than that covered by Section 313(c) is intended to fall within the scope of H.R. 5464. Thus, there is no remedy under the present drawback law to obtain a refund of duties upon the exportation of merchandise which meets sample or specifications but has not been subjected to a manufacturing operation.

We suggest that the broad purposes of H.R. 5464 are consistent with the general drawback objectives of encouraging U.S. industry towards greater manufacture and exportation. While it would not foster manufacturing operations, it nevertheless would foster other incidental operations in many cases, and the exportation of the merchandise to foreign markets in all cases. It will further help the U.S. exporter by providing additional flexibility within his marketing structure.

The proposal is also consistent with the concept behind temporary importation bonds, manipulating warehouses and foreign trade zones. Each of these devices permits the performance of certain operations in the United States without requiring the payment of duty as long as the article which is imported is ultimately exported. On first glance, it might appear that these are adequate alternatives and that the proposed law is unnecessary. A close analysis of the requirements of each of these avenues as well as the operations intended to be covered by the present law will indicate that they are not adequate.

For example, merchandise can be imported under a temporary importation bond for testing, processing, and other specified purposes if it is known at the time of importation that the imported article will be exported. A temporary importation bond cannot be used if, at the time of importation, there is not a bona fide intent to export the merchandise. Assume, for example, that a container of lightbulbs is to be imported for testing and that it is not known which ones, if any, will be exported. A consumption entry is filed. If, after importation, the importer decides to export 90 percent of the articles, he will have no vehicle to obtain the duty already paid. If, on the other hand, he posts the temporary importation bond and thereafter does not export the articles he is subject to a liquidated damages action in the amount of double the duties which would have been due. Thus, without a clear knowledge in advance of exactly which articles are to be exported and which will remain in the United States the temporary importation bond procedure is not a practical mechanism.

A bonded manipulating warehouse (19 U.S.C. Section 1562) may be a practical approach when the importer knows in advance that he will be subjecting the articles to certain operations and thereafter exporting them. The importer who determines after importation that he has an opportunity to sell the goods in a

foreign market and who has not put them in a bonded warehouse would have no recourse to obtain the duties already paid. In addition, the need for Customs authorities to be present during certain parts of the manipulating operations and for the filing of documents, as well as the cost of bonding and providing adequate safety measures, subjects the importer to substantial charges which could outweigh the duty savings.

A foreign trade zone is subject to the same types of restrictions and costs as the bonded warehouse and the importer who does not have access to a foreign trade zone but thereafter exports the merchandise in the same condition in which imported would not be able to obtain the refund of duty.

It is apparent from the above that there is no inherent objection to refunding duties upon the exportation of the merchandise. The avenues currently available, however, are not adequate or practical for a large segment of the potential exporting community. H.R. 5464 would provide relief consistent with, but unavailable under, the present law.

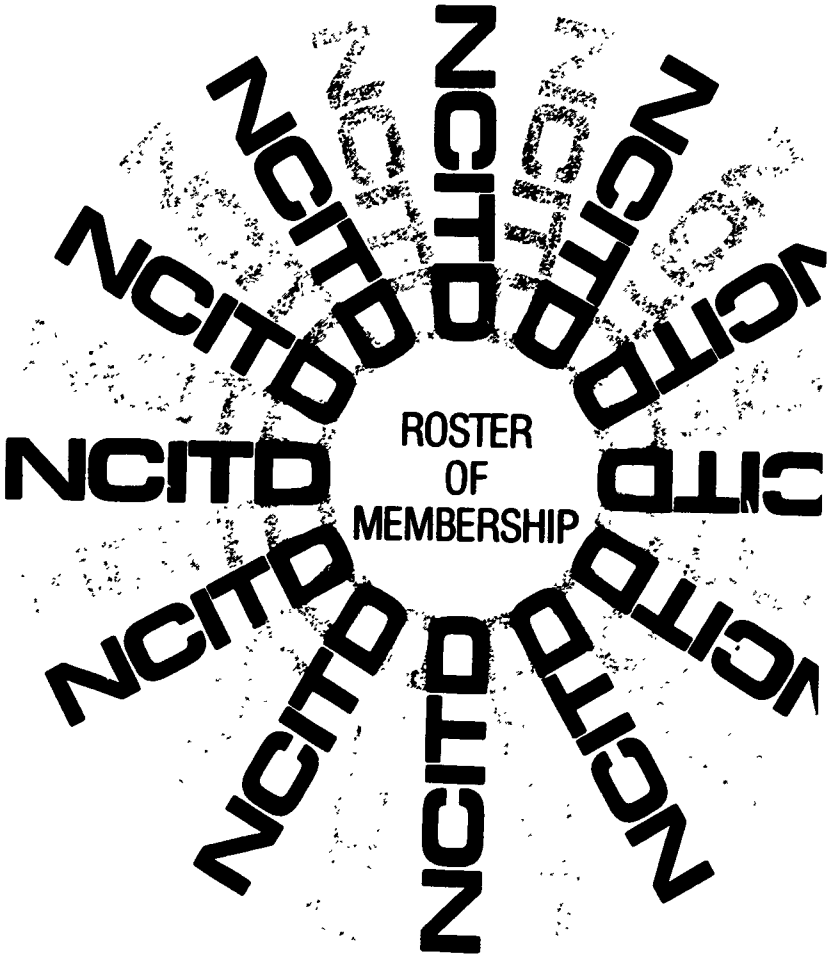
VII. BENEFITS TO THE UNITED STATES

1. *Increase in U.S. labor.*—To the extent that certain operations currently done abroad would be transferred to U.S. facilities, there would likely be an increase in the domestic labor force needed to perform these jobs. A reduction in unemployment and increases in tax revenues could be anticipated.

2. *Improvement in the balance of payments picture.*—It is difficult to estimate the improved balance of payments picture. However, it seems clear that the proposal will serve as an incentive to exports, and to the extent that it does, the balance of payments posture will be improved.

VIII. CONCLUSION

We appreciate having had the opportunity to present our views on this proposed legislation and we are available for further discussion with the committee staff at any time if it will be helpful.



The National Committee on
INTERNATIONAL TRADE
DOCUMENTATION

30 East 42nd Street
New York, N.Y. 10017

As of September 1, 1979

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THE NCITD POLICY

The National Committee on International Trade Documentation is a non-profit, privately financed, membership organization dedicated to simplifying and improving international trade documentation and procedures, including information exchange by either paper or electronic methods.

Working through individuals and companies, members and non-members, United States and overseas governmental departments and agencies, and duly constituted national and international committees and organizations, it serves as a coordinator and as a central source of information, reference and recommendations on problems of international trade information exchange and procedures.

Through continuing technical research, combining intermodal and intercompany experiences of all parties to the international transactions, specific programs and all-inclusive systems to eliminate international paperwork, to simplify documentation, and to improve information exchange methods are being recommended. The goal—to eliminate the major paperwork barriers and to encourage the automated exchange of the necessary trade data.

COORDINATION THROUGH NCITD

There are many partners in world trade, the more significant ones being Industry, Banking, Transportation, Services, Insurers, Governments, and International Organizations.

The creation and maintenance of common understandings and cooperative relationships by all partners with regard to international trade documents, information exchanges, and procedures are essential to the achievement of common goals.

To better serve all types of business and government in the conduct of global trade, NCITD serves as the catalyst of coordination in this field.

DISC RULING

Membership contributions are fully tax-deductible as a business expense. Contributions made by companies that are qualified as DISC are permitted to classify these membership contributions to NCITD as an Export Promotion Expense.

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WHO MAKES UP NCITD?

Membership consists of more than 200 companies interested in international trade and distribution. These constitute representatives of exporters, importers, manufacturers, carriers of all types, banks, insurance underwriters and brokers, forwarders, import brokers, associations, port authorities—just about everyone who participates in international commerce.

HOW DOES NCITD WORK?

Work is conducted through a technical administrative staff, assisted by a large number of representatives of member companies, who serve on special committees and project groups. Membership contributions, both financially and through technical manpower, are necessary ingredients to NCITD viability and to accomplishment of its important goals.

HOW CAN NCITD HELP YOU?

Archaic, habitual and voluminous paperwork and accompanying procedures threaten the success of the international trade they were intended to assist. The documentation entailed in international transactions has reached such magnitude that it delays shipments, boosts costs, imperils profits, discourages expansion, and overburdens industry and government. Totalling over $8 billion per year, this strangling paperwork cost often amounts to more than 10% of the value of goods being shipped. NCITD, by its work, can alleviate or eliminate many of these costs and related problems. In so doing, *it can help increase the profitability of your international transactions,* regardless of your specific function in the total sales and distribution pattern.

Many NCITD recommendations and new programs are now available and are being utilized by international traders. Your membership assures direct availability of these benefits for your company.

HOW CAN YOU HELP NCITD AND ITS PROGRAMS?

Membership growth and participation provides not only a broadened experience base for NCITD research, but also assures financial support for its projects. The voluntary contributions are scaled to reflect a company's involvement in international trade, are fully tax deductible as a business expense, and have been classified as "Export Promotion Expenses" for DISC companies.

WHAT IS NCITD AND WHAT ARE ITS GOALS?

The National Committee on International Trade Documentation is a non-profit, privately-financed, membership organization that conducts research and implements recommendations to simplify international trade documentation procedures. Working through individuals and companies, members and non-members, United States and other governmental departments and agencies, and many national and international committees and organizations, it serves as the coordinator and representative of American business in solving international trade paperwork problems.

Its basic goals are:

- To eliminate international trade paperwork expense and the resulting trade barriers!
- To standardize documents and related procedures!
- To encourage mechanization, data processing, coding and transmission of information!
- To provide an active central clearing house for research and education through which industrial, commercial, governmental and international objectives toward better documentation systems in international trade can be progressed!

You can benefit your company's international trade objectives, improve your profits, and simplify your distribution problems by joining NCITD!

MEMBERSHIP IN NCITD

This roster contains a listing of the active members of the National Committee on International Trade Documentation as of September, 1979. In addition to these, the organization continues to work with many past members, with a growing list of interested prospective members and with company, organizational and Government contacts throughout the world.

Membership is on a voluntary, subscription basis, with the amount of the contribution varying with the size and type of company or concern, and its degree of involvement in international trade.

The membership listing is divided into five basic groupings, as follows:

GENERAL BUSINESS — includes manufacturers, exporters, importers and freight forwarders and brokers.

CARRIERS — includes ocean, rail, air and truck carriers, and steamship agents.

FINANCIAL AND INSURANCE — includes banks, marine insurance underwriters and insurance brokers.

PORT AUTHORITIES — includes port authorities and similarly constituted bodies.

EXCHANGES AND ASSOCIATIONS — includes shipping exchanges, trade associations, committees, chambers of commerce and all other groups.

Within these major groupings are included membership scales for such categories as Conferences, Universities, Attorneys, Consultants, Expediters, Warehousemen, Terminal Operators and Barge Companies.

In addition to the individual listed as the company representative and "Member of Record" in this roster, most member companies have appointed additional technical representation to participate in the work of more than 30 technical research committees and subcommittees.

For further information, please address: The National Committee on International Trade Documentation, Suite 1406, 30 East 42nd Street, New York, N.Y. 10017 — Cable: INTRADOCUM.

COOPERATIVE AND PARTICIPATING COMPANIES

In addition to the list of active, supporting member companies, many others have participated in NCITD work for limited periods or in connection with special projects. There are more than 200 companies in this category. Such support has been very helpful and is gratefully acknowledged.

MEMBERSHIP CATEGORIES — FEE STRUCTURE

The schedule of membership contributions is divided into categories with the amount of the annual fee being based on company size and involvement in international trade.

Companies are encouraged to select the category that most accurately describes their activities and the fee level within that category that corresponds to the size of their company operations. A special "Application for Membership" form explains the details within each participating group.

FEE STRUCTURE

CATEGORY	ANNUAL FEE RANGE
EXPORTERS, IMPORTERS, MANUFACTURERS	$380 - $12,600
OCEAN FREIGHT CARRIERS	$1,250 - $2,500
SHIPS BROKERS & AGENTS	$380
MOTOR CARRIERS	$380 - $630
RAILROADS	$950
BARGE OPERATORS	$330
AIRLINE FREIGHT CARRIERS	$630 - $2,500
BANKS	$380 - $1,250
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MARINE INSURANCE BROKERS	$1,250
PORT AUTHORITIES, TERMINAL OPERATORS, AND WAREHOUSEMEN	$380 - $1,250
TRADE ASSOCIATIONS, COUNCILS, CHAMBERS OF COMMERCE, BOARDS OF TRADE, STEAMSHIP AND AIRLINE CONFERENCES, UNIVERSITIES, AND TRADE GROUPS	$190

NCITD ROSTER OF MEMBERSHIP
as of September, 1979

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New York, New York
O.I.M. Porton

Autoliners, Inc.
New York, New York
A.J. Stretz

Bruce Transfer Corporation
Jamaica, New York
J.R. Rhoades

Columbus Line, Inc.
New York, New York
M.M. Deluca

Consolidated Railroad Corp.
Philadelphia, Pennsylvania
Richard Steiner

Dart Container Line, Inc.
New York, New York
Frank Fagan

Farrell Lines, Inc.
New York, New York
Jorge Reyes-Montblanc

Flexi-Van Corporation
New York, New York
Leo L. Mellam

Flying Tiger Line, Inc.
Los Angeles, California
Charles Laatz

General Steamship Corp., Ltd.
San Francisco, California
John J. Greene

Japan Line (USA) Ltd.
Los Angeles, California
Herbert Hinze

Kerr Steamship Company
Cranford, New Jersey
Donald Maccarone

Moller Steamship Company, Inc.
Maersk Line
New York, New York
Tim Huckbody

Norton, Lilly & Company, Inc.
New York, New York
E.M. Sorenson

NYK Line
New York, New York
T. Miura

Prudential Lines, Inc.
New York, New York
Spyros Skouras

Sea-Land Industries, Inc.
Edison, New Jersey
Peter J. Finnerty

Seatrain Lines, Inc.
Weehawken, New Jersey
Alex Malpica

United States Lines, Inc.
Cranford, New Jersey
Lucien H. Bliss

United States Navigation, Inc.
New York, New York
F.J. Barry

Trans Freight Lines, Inc.
Secaucus, New Jersey
R.W. Cavannaugh

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W. Ridder

Bank of Boston International
New York, New York
Michael J. Connolly

Bank of New York
New York, New York
Johan F.R. Van Steenhoven

Bank Sanaye Iran
New York, New York
Joseph Langlois

Chase Manhattan Bank
New York, New York
William F. Fox

Chemical Bank, N.A.
New York, New York
Marvin Goldstein

Crocker International Bank
New York, New York
Anthony W.G. Lord

Daiwa Bank Trust Company
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First National Bank of Chicago
Chicago, Illinois
Alex A. Tyminski

French American Banking Corp.
New York, New York
Guilbert Budendorff

Johnson & Higgins
New York, New York
David W. Welles

Manufacturers Hanover Trust
Company
New York, New York
Charles J. McGee

Marine Midland Bank
New York, New York
John J. Dempsey

National Bank of Detroit
Detroit, Michigan
Mr. Robert A. Vibbert II

National Bank of North America
West Hempstead, New York
Roger O. Lawrence

Northern Trust Company
Chicago, Illinois
Robert Lemm

Pittsburgh National Bank
Pittsburgh, Pennsylvania
Jerome J. Perrino

Whitney National Bank
New Orleans, Louisiana
H. Gerard Erath

Citibank, N.A.
New York, New York
Leonard A. Back

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Port of Houston Authority
Houston, Texas
R. P. Leach

Port of New Orleans Authority
New Orleans, Louisiana
Denis B. Grace

Port. Auth. of New York
and New Jersey
New York, New York
Clifford B. O'Hara

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COOPERATING INTERNATIONAL ORGANIZATIONS

AUSTRALIA — Department of Trade and Industry—Canberra
AUSTRIA — Federal Chamber of Industry and Commerce —Vienna
BULGARIA — Ministry of External Commerce—Sofia
CZECHOSLOVAK FITPRO — Facilitation of International Trade Procedures—Prague
CCC —Customs Cooperation Council—Brussels
COSTPRO — Canadian Organization for the Simplification of Trade Procedures—Ottawa
DANPRO — Danish Committee on Trade Procedures —Copenhagen
ECA — Economic Commission for Africa—Addis Ababa
ECE — Economic Commission for Europe—Geneva
ECLA — Economic Commission for Latin America—Santiago
ECWA — Economic Commission for Western Asia—Beirut
EEC — European Economic Community—Brussels
ESCAP — Economic and Social Commission for Asia and the Pacific—Bangkok
FIATA — International Federation of Forwarding Agents Associations—Geneva
FINPRO — Finnish Committee on International Trade Procedures —Helsinki
GATT — General Agreement on Tariffs and Trade—Geneva
GERMAN Democratic Republic — Ministry of Foreign Trade —Berlin
GERMANY — Federal Republic of — DEUPRO—Bonn
HUNGARY — Datorg-SA and Ministry of Foreign Trade —Budapest
HONG KONG — Trade Facilitation Committee—Hong Kong
IAPH — International Association of Ports and Harbors—Tokyo
IATA — International Air Transport Association—Geneva
ICC — International Chamber of Commerce—Paris
ICHCA — International Cargo Handling Coordinating Association—London
ICS — International Chamber of Shipping—London
IMCO — Inter-Governmental Maritime Consultative Organization —London

INDPRO — Indian Institute of Foreign Trade—New Delhi
ISO — International Standards Organization—Geneva
JASTPRO — Japan Association for Standardization of External Trade Documentation—Tokyo
KENPRO — Kenya Facilitatiion Committee—Nairobi
NORDIPRO — Nordic Trade Procedures Committee—Oslo
NORPRO — Norway Commission on Trade Procedures—Oslo
PHILPRO — Philippine National Trade Facilitation Committee —Manila
POLPRO —Poland Trade Procedures Simplification Committee —Warsaw
ROC — (Republic of China) — National Committee on Documentation Facilitation for International Trade and Transportation —Taipei, Taiwan
ROMANIA — Ministry of Commerce—Bucharest
SIDNAP-NZ — Simplification of International Documents and Procedures, New Zealand—Wellington
SIMPROFRANCE — French National Committee on Trade Documents—Paris
SITD — Korean Trade Facilitation Committee—Seoul
SITPROCOM — Simplification of Procedures in International Commerce—Brussels
SITPRONETH — Netherlands Committee for Simplification of International Trade Procedures—Rijswijk
SITPRO — U.K. Simplification of International Trade Procedures Board—London
SITPROSA — Simplification of International Trade Procedures South Africa—Johannesburg
SOVIET UNION — Ministry of Foreign Trade—Moscow
SWEPRO — Swedish Trade Procedures Council—Gothenburg
SWISSPRO — Office of Commercial Expansion—Berne
UIC — International Union of Railways—Paris
UN — United Nations—New York and Geneva
UNCTAD — UN Conference on Trade and Development—Geneva
UNCTAD/FALPRO — UNCTAD Special Program on Trade Facilitation—Geneva

Mr. CORCORAN. My name is John D. X. Corcoran and I am testifying on behalf of the National Committee on International Trade Documentation. I am the manager for customs and immigration at the Ingersoll-Rand Co.

My particular area of concern is the impact of H.R. 5464 on the capital machinery sector of America's participation in international trade.

The capital goods industry has made very effective contributions to the export-import merchandise balance of trade in recent years. The overall statistics relating to America's export-import merchandise balance of trade, according to the Census Bureau, registered a deficit in 1979 of $23.3 billion, and in January 1980, $3.5 billion, both based on f.o.b. values.

As contrasted with this area of strong concern, the Bureau of the Census indicates that in 1979 the export-import merchandise balance of trade for capital goods registered a positive balance of payments of $33 billion, surely an industry whose markets are worth protecting.

The ability of a machinery exporter to service the needs of his export customer is the lifeblood of his business. If the machinery exporter cannot supply the bill of materials required by the customer at the time of his initial order, or if the machinery operator cannot adequately supply after-sale service for the equipment supplied, the customer will remember the fact.

The exporter must have available a complete line of his manufactures, both completes and spares/replacements, so as to ship at the earliest possible date. The excuse that items 7 and 13 in the customer's bill of materials must be back-ordered from an overseas distribution center is not an adequate substitute for service.

When a customer's machine is down in Brazil due to a requirement for parts, and he places his order for the parts with the American manufacturer, he is not going to be satisfied that he can have repair parts 1 through 26, except that 3, 7, and 22 must be back-ordered on the European distribution center. Likewise, he will not consider that advice to be an adequate substitute for service.

At the present time, particularly with regard to small turnover parts, due to the costs of ocean freight, customs duties, and other transportation and warehousing costs, in many cases the U.S. exporter of such units and parts will inventory the units and parts close to the overseas supplier where they may be most economically maintained.

Being assured that he will be able to recover his import duties at the time of exportation would be one less negative factor which will mitigate against maintaining the distribution center conveniently in the United States.

Businessmen during the period of the MTN negotiations, during the pendency of the Roth-Ribicoff bill, and now with reorganization of the Government's international trade functions, have been asking the question: "Do we want to fool around, or do we want to compete in international markets?"

The President, the Trade Expansion Counsel, the Secretary of Commerce, former Deputy Assistant Secretary of Commerce Frank Weil and others have been responding with a very loud voice that we want to engage in international trade.

The passage and signing into law of H.R. 5464 will remove one more inhibiting factor to maintaining total flexibility in engaging in international trade. Thank you, gentlemen.

Mr. GIBBONS. Thank you.

Now for Allis-Chalmers is Ms. Ring? Not here?

H.R. 4006

Mr. GIBBONS. The next bill is H.R. 4006, by Mr. Won Pat of Guam and Mr. Evans of the Virgin Islands and a few other cosponsors.

Mr. WON PAT——

Mr. GIBBONS. Excuse me; I am sorry; my glasses don't allow me to call you mister. You are the counsel for the Allis-Chalmers Power Systems, Inc., and you may proceed.

That is on H.R. 5464.

STATEMENT OF BETH C. RING, COUNSEL, ON BEHALF OF ALLIS-CHALMERS POWER SYSTEMS, INC., ASEA, INC., AND COGENEL, INC.

Ms. RING. My name is Beth Ring and I am an attorney with the firm of Freeman, Meade, Wasserman & Schneider in New York. I am appearing on behalf of three major international companies which, among other activities, import heavy mechanical, electrical, and transportation equipment classified in parts 4, 5, and 6 of schedule 6 of the Tariff Schedules of the United States. Many of these products are utilized in large-scale energy projects located throughout the United States.

While we agree with the comments already made in support of the proposed bill, we would like to address a particular problem which presently exists in the administration of the present drawback law, and which could apply, as well, to the proposed bill.

Dealers in heavy equipment face very special problems in obtaining drawback for certain types of highly sensitive equipment. Because this large-scale equipment is very technically complex, it is often impossible to repair such equipment in the United States, and despite the enormous cost, such equipment must be reexported for repair or replacement.

However, damage or defects are often discovered only after the equipment reaches the installation site and is tested, inspected, or made operational.

In order to sustain a claim for drawback under section 313(c) of the Tariff Act of 1930, the importer must prove that the damage was sustained prior to importation, rather than after importation. High technology equipment—such as large power transformers, generators, and high-voltage circuit breakers—frequently weigh several hundred tons and cost several million dollars.

This type of equipment must be transported by ships and railcars which are specifically equipped, at significant cost, with sensors and specialized shock absorbers. The existence of any defect or damage which renders the unit "not conforming to sample or specifications" is often unrevealed until the massive unit reaches its ultimate destination and is made operational. It is simply not possible to discover the

existence of the defect or damage until the equipment is imported, transported to the site and installed.

Since the damage or defect could result from a manufacturing operation, from the ocean voyage or from the inland transportation, it is virtually impossible to ascertain at what point the defect or damage occurred.

Under the circumstances, the customs service is generally sympathetic to drawback claims. Nevertheless, the customs service requires concrete evidence to prove that the merchandise was not conforming before importation. It has been especially difficult for importers of heavy equipment to ascertain the point of damage to a piece of equipment which may have occurred either on the ocean prior to entry or on the railcar in transit to the installation site after importation.

The cost of replacing such equipment is significantly magnified if drawback is denied and duty must again be paid after reimportation of the repaired unit or its replacement.

Examples of problems actually encountered by heavy equipment importers dramatically illustrate the kind of commercial nightmares which have occurred under the present drawback law. One company imported a transformer which revealed no indication of physical damage. After arrival at the site it was discovered that the transformer had been damaged at some point in transit. In attempting to sustain a claim for drawback, the importer enlisted a team of engineers and technical equipment personnel to ascertain when and where in the transportation process the damage had occurred, At the same time, the customs service was enlisting the aid of technical personnel at the Interstate Commerce Commission and the Federal Maritime Commission to make the same judgment. Because neither the importer nor the customs service was able to actually ascertain when this damage was incurred, the claim for drawback was ultimately denied.

In the second situation, four identical units of heavy equipment were manufactured abroad; two were shipped to the United States and two remained in the country of origin; one of the units remaining in the country of origin exploded after installation. It was discovered that the accident resulted from a manufacturing defect which was common to all four units.

The importer attempted to obtain drawback upon the reexportation of the equipment to the country of origin, on the ground the equipment contained a serious manufacturing defect. Since the two units entered the United States at two different ports of entry, the respective drawback claims were to be administered separately by separate customs officials. At one port of entry, the Customs Service ruled that the importer did not have to actually install the unit and have it explode before getting its drawback. At the other port of entry, the claim for drawback was denied and it is presently being reconsidered.

We respectfully urge the subcommittee to clarify the bill to eliminate this problem by changing the language "exported in the same condition as when imported" to "exported in the same condition as when delivered to the ultimate consignee" or similar language.

Should the subcommittee deem it inappropriate to make this change for general applicability, we respectfully urge that the Congress enact a special provision covering drawback for articles classified within

parts 4, 5, and 6 of schedule 6. There is precedent for such specialized provision in the present drawback statute which resolves special problems for products such as flavoring extracts, medicinal or toilet preparations, bottled distilled spirits and wine, salt, and aircraft engines.

We would be prepared to provide the subcommittee with a confidential memorandum of fact and law in support of this statement; and I will attempt to answer any questions you may have.

[The prepared statement follows:]

STATEMENT OF ALLIS CHALMERS POWER SYSTEMS, INC., ASEA, INC., AND COGENEL INC.

SUMMARY

1. Importers of heavy equipment classified in Schedule 6 of the Tariff Schedules face special problems in obtaining drawback.

2. Defects and in-transit damage are usually only first discovered upon reaching the installation site.

3. The Customs Service requires enormous amounts of documentary proof that any damage or defects occurred before, rather than after, importation. Such proof is virtually impossible to obtain and drawback is often denied.

4. H.R. 5464, as drafted, does not correct this problem. Such situations, while appropriate for "same condition drawback," will still require the burdensome and often unobtainable evidence of "condition as imported."

5. The language "condition as when imported" should be changed to "condition as when delivered to the ultimate consignee" in order to eliminate this gross injustice in the administration of the drawback law.

6. Should the Subcommittee deem it inappropriate to make the above change for general applicability, a special provision for Schedule 6 heavy machinery should be made, pursuant to special-product provision precedent already contained in the drawback law.

STATEMENT

Members of the Subcommittee, my name is Beth Ring and I am an attorney with the firm of Freeman, Meade, Wasserman & Schneider in New York. I am appearing on behalf of three major international companies which, among other activities, import heavy mechanical, electorial and transportation equipment classified in parts 4, 5 and 6 of Schedule 6 of the Tariff Schedules of the United States. Many of these products are utilized in large-scale energy projects located throughout the United States.

Dealers in heavy equipment face very special problems in obtaining drawback for certain types of highly sensitive equipment. Because this large-scale equipment is very technically complex, it is often impossible to repair such equipment in the United States and—despite the enormous cost—the equipment must be re-exported for repair or replacement. However, damage or defects are often discovered only after the equipment reaches the installation site. In order to sustain a claim for drawback under Section 313(c) of the Tariff Act of 1930, the importer must prove that the damage was sustained prior to importation, rather than after importation. High technology equipment (such as large power transformers, and generators, high voltage circuit breakers) frequently weigh several hundred tons and cost several million dollars. This type of equipment must be transtransported by ships and railcars which are specially equipped (at significant cost) with sensors and specialized shock absorbers. The existence of any defect or damage which renders the unit "not conforming to sample or specifications" is often unrevealed until the massive unit reaches its ultimate destination and is made operational. It is simply not possible to uncover the existence of the defect or damage until the equipment is imported, transported to the site, and installed. Since the damage or defect could result from a manufacturing operation, from the ocean voyage or from the inland transportation, it is virtually impossible to ascertain at what point the defect or damage occurred.

Under the circumstances, the Customs Service is generally sympathetic to drawback claims. Nevertheless, the Customs Service requires concrete evidence to prove that the merchandise was "not conforming" before importation. It has been especially difficult for importers of heavy equipment to ascertain the point of damage to a piece of equipment which may have occurred either on the ocean

prior to entry or on the railcar in transit to the installation site after importation. The cost of replacing such equipment is significantly magnified if drawback is denied and duty must again be paid after re-importation of the repaired unit or its replacement.

One other point should be mentioned. Most insurance companies provide insurance from point of manufacture to ultimate destination in the United States. The insurance companies do not require proof as to where the insurable event occurred despite the fact that the amount of an insurance claim is many times greater than the amount of a drawback claim. The burden of documentary and evidentiary proof is disproportionate to the amount of a drawback claim.

Two examples of problems actually encountered by heavy equipment importers dramatically illustrate the kind of commercial nightmares which have occurred under the present drawback law. One company imported a transformer which revealed no indication of physical damage. After arrival at the installation site, it was discovered that the transformer had been damaged at some point in transit. In attempting to sustain a claim for drawback, the importer enlisted the help of a team of engineers and technical personnel to ascertain exactly when and where in the transportation process the damage had actually occurred. At the same time, the Customs Service sought the assistance of technical personnel at the Interstate Commerce Commission and the Federal Maritime Commission in order to determine whether the type of damage to the transformer would ordinarily result during transit from the United States port of importation to the erection site. Since neither the importer nor the Cutsoms Service could ascertain the point of damage, the application for drawback was ultimately denied.

In the second situation, four identical pieces of equipment were manufactured abroad. Two were shipped to the United States, and two remained in the country of origin. One of the units which remained in the country of origin blew up after installation abroad. It was discovered that the accident resulted from a manufacturing defect which was common to all four units. The importer attempted to obtain drawback upon the re-export of the equipment to the country of origin on the ground that the equipment contained a dangerous manufacturing defect. Since the two units which entered the United States entered at different ports, the two respective drawback petitions were decided separately by different Customs officials. The Customs Service at one port ruled that the importer did not have to actually install the unit and have it explode in order to sustain a claim for drawback. At the other port, the claim for drawback was initially denied and is under reconsideration.

H.R. 5464 appears to move in the direction of liberalizing the drawback law. However, the language of the proposed bill does not eliminate the problem which I have described. The language "exported in the same condition as when imported" could open the door for the Customs Service to require evidentiary proof of the "condition" of the merchandise "when imported". Such a requirement could be as burdensome as the present requirements. The language in the proposed legislation does not eliminate the difficult burden of proving that the defect or damage was sustained before importation and not while in transit from the United States point of importation to the point of delivery.

We respectfully urge the Subcommittee to clarify the bill to alleviate this problem by changing Section (1)(A)(i) to read "exported in the same condition as when delivered to the ultimate consignee." Should the Subcommittee deem it inappropriate to make this change for general applicability, then it is respectfully urged that the Congress enact a special provision covering drawback for articles classified within Parts 4, 5, and 6 of Schedule 6. There is precedent for such specialized provisions in the drawback statute which resolve special problems for products such as flavoring extracts, medicinal or toilet preparations, bottled distilled spirits and wines, salt and aircraft engines.

We will provide the Subcommittee with a confidential memorandum of fact and law in further support of this statement, and I will attempt to answer any questions which you may have.

Confidential Memorandum of Fact and Law

SUMMARY

This Memorandum is submitted in support of Beth Ring's statement, which was presented to this Committee on March 17, 1980. It is respectfully requested

that the Committee's Report on H.R. 5464 make it clear that "drawback" is not to be denied merely because an importer is unable to document that the imported merchandise was damaged before importation.

The inclusion of such clarifying language in the Report would be of particular importance to United States companies which use power generation, power transmission and related energy equipment. The requested language would not cause any adverse consequences to the competitive United States producers.

COMMENT

To qualify for drawback under H.R. 5464, a claimant for drawback would be required to establish that the merchandise is exported in the same condition "as when imported". American companies which import very large, high-technology energy equipment are often unable to verify the condition of merchandise "when imported" because the condition of such large-scale equipment cannot be determined until after delivery and assembly at the ultimate site in the United States.

In the event an American company could not prove that a defect was present before importation, H.R. 5464 would likely require the denial of drawback since "strict" (and not merely "substantial") compliance with the drawback laws and regulations is a precondition to drawback. *Carl Matusek Shipping Co., Inc. et al.* v. *United States*, 51 Cust. Ct. 8, C.D. 2406 (1963).

Under the "strict compliance" doctrine, the Customs Service has, in the past, denied drawback pursuant to the present Section 313(c) [1] for the failure to prove the commercially "unprovable". The proposed language of H.R. 5464 will again create extremely difficult questions of proving the condition of the merchandise "when imported".

Because of the Committee's legislative priorities, we support passage of H.R. 5464 as introduced. However, we request that in its Report, the Subcommittee address the problem of proving the condition of merchandise "when imported". Specifically, we request that the Subcommittee recognize that it may not be possible to ascertain the imported condition of large-scale technical equipment until after it has been delivered to the job site. We ask the Committee to include the following language in its Report:

"The Committee expects that administrative regulations will not be interpreted in a manner which will impede the liberal allowance of drawback, such as requiring documentary proof that defective merchandise received by an ultimate consignee was damaged prior to importation or that damaged merchandise did not otherwise conform to specification."

We believe that support for this position may be found in *Lansing Company, Inc.* v. *United States*, 77 Cust. Ct. 92, C.D. 4675 (1976), in which drawback under Section 313(c) was permitted upon the exportation of certain defective zippers. In that case, the Government opposed the drawback claim because the plaintiff did not submit purchase orders or specifications to Customs Service officials. The Court allowed the plaintiff's claim but resorted to a legal "fiction" to establish the non-conformity of the merchandise:

"* * * [w]hen purchasing merchandise, there is no stronger specification * * * than that which says that *delivered* merchandise will function for the purpose it is designed and intended." (*Supra*, at 95, italic added.)

Similarly, in *Johnson Motors, Inc.* v. *United States*, 53 Cust. Ct. 241, Abs. 68702 (1964), certain of a number of imported motor scooters which had been purchased following the testing and sampling of prototype models were subsequently found by the importer and its customers to be defective. In upholding the plaintiff's claim for drawback, the Customs Court concluded that the motor scooters did not conform to the foreign exporter's prototype sample. No showing was made as to when the defect arose. Despite the liberal intent of the *Lansing* and *Johnson* cases, the Customs Service has required "strict compliance" with the drawback laws and regulations and has resisted drawback allowances where difficult questions of proof exist.

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[1] Under Section 313(c), drawback is allowed only upon a positive showing by the claimant that the merchandise failed to conform to "samples or specifications." Such a showing is made by submitting a copy of the purchase order, the sample or specification against which order was made and related documentation. (Section 22.32(b), Customs Regulations; 19 C.F.R. 22.32(b).) See also *Swan Tricot Mills Corporation* v. *United States*, 63 Cust. Ct. 530, 535, C.D. 3948 (1969). If a drawback claimant does not establish the fact that the merchandise fails to conform to specifications, or otherwise fails in any manner to comply with the regulations, drawback is denied. *Swan Tricot*, supra. Even wartime restrictions which preclude a claimant from a timely exportation did not relieve the claimant from his obligation to comply strictly with the law and regulations, *Roman Trading Co., Inc.* v. *United States*, 27 Cust. Ct. 34, C.D. 1344 (1951).

We believe that further support for the requested language is found in proposed Section 313(1)(2). This section permits "incidental operations" not amounting to a "use", such as "testing". There is no requirement that the testing take place under Customs Service supervision or within Customs custody at all. There is no prohibition against the transportation of imported merchandise to a job site for "testing".

Therefore, we respectfully urge that the transportation of imported merchandise to a job site for testing be specifically recognized as consistent with a statutory finding of being in the "same condition as when imported" and that where such merchandise is found to be defective, its exportation under the proposed amendment would result in the allowance of drawback.

We thank the Committee for its consideration.

Mr. GIBBONS. Thank you. You have a very interesting statement there.

I think we can probably structure an amendment that would take care of the problem you have pointed out.

We find one of our cosponsors, Mr. Frenzel, is a very talented draftsman and I am sure he didn't anticipate it.

Mr. FRENZEL. Would the Chair yield?

The reason I didn't anticipate it is because it is a different problem. I think she has an interesting problem, and it looks like she is looking for a convenient vehicle; but I am not sure I have enough engine to want to pull her problem through. I think it is something different that we need some additional hearings on; and, you know, I am sure our staff would be glad to discuss the matter with her and receive those confidential memorandums of fact and law.

But really, I must say, it is a different problem from what this bill tries to address, and I appreciate her industry and ingenuity in trying to find a way to resolve a problem which I think is quite different from the problem that my bill addresses.

Ms. RING. If I may point out, Mr. Frenzel, the customs service, in enacting regulations is somewhat constrained by the language in a particular statute; it has to work with the law as it is; and the fact is that in both the present drawback statute in section 313(c), where the language says "condition upon exportation of merchandise not conforming to sample or specification," and in the language of this statute, "condition upon importation," there really is not much the customs service can do in its administration but to follow the language as it is written. And I do believe that the same problems in documenting what condition merchandise arrives at in the United States upon its importation is going to exist under both laws.

Mr. FRENZEL. I don't deny it is a problem and I don't deny that it could be handled in this bill. What I am saying is that the problem of delivery and damage and proof of damage and specification of damage is something totally different than what is contemplated by the bill which is before the committee.

You take us into a whole new area which I think is going to involve additional investigation on the part of the subcommittee.

Mr. GIBBONS. I think what she is saying to you is, don't make her case any worse by your bill.

Mr. FRENZEL. Well, I think I can tell her that it is certainly not my intention to make it worse.

Mr. GIBBONS. Because you already have one decision from one customs court, or one port of entry, saying that it is a drawbackable item, but in another one they seem to have waffled on it; and you just don't

want Mr. Frenzel's bill, and I am sure he doesn't either, to make your situation worse.

You would like to improve it, but if he is not gracious enough to do that, you don't want him to hurt it; is that right?

Ms. RING. That is correct, sir.

I would like to say we do support this bill, and this bill does foster importers and we support the comments in its favor that have been made; but we wanted to point out this particular problem in its administration which will probably exist.

Mr. GIBBONS. Well, thank you very much.

Ms. RING. Thank you, sir.

Mr. GIBBONS. And now, at long last, Mr. Won Pat and Mr. Evans, who have been waiting so patiently in the audience to talk about the bill H.R. 4006.

First of all, we want to welcome you two gentlemen here. We believe that you are most effective representatives of the territories that you represent here in the Congress, and we know that it is a difficult job to perform in the manner which you do, and we welcome you.

And let's see, Mr. Won Pat, since you are the closest to the microphone, why don't you proceed first?

As you know, the administration has endorsed your bill, H.R. 4006, and so you have got one of the heavy problems behind you.

Mr. Won Pat?

STATEMENT OF HON. ANTONIO B. WON PAT, A REPRESENTATIVE IN CONGRESS FROM THE TERRITORY OF GUAM

Mr. WON PAT. Thank you, Mr. Chairman.

Mr. Chairman and members of the House Trade Subcommittee, I thank you for the opportunity to appear personally on behalf of H.R. 4006, my bill to amend general headnote 3(a) of the Tariff Schedules of the United States.

In compliance with your request to witnesses for brevity, and because I have already furnished the subcommittee with extensive background material on this bill and its predecessors, I shall state just a few key points.

General headnote 3(a) was enacted in 1954 to stimulate manufacturing in Guam and the other U.S. insular possessions. It allows duty-free importation into the U.S. customs zone of products manufactured in the territories from foreign materials, provided the foreign parts constitute not more than 50 percent of the completed item's value. That is, at least 50 percent of the import value of all headnote 3(a) products must be added in the insular areas. In addition to this value-added requirement, the items are judged against a rather complex set of Customs Service regulations to insure that the foreign components undergo "substantial transportation" in the U.S. possessions.

Unfortunately, many problems not within Guam's power to control have undermined the benefits intended from headnote 3(a). Among these are restrictive U.S. shipping laws, implementation of the Generalized System of Preferences, devaluation of the American dollar, and increasing domestic labor costs. According to Guam Chamber of Commerce findings, Guam's minimum hourly wage is equal to the average daily wage of many workers in the Asian labor market with which Guam competes.

But the primary drawback to full advantage from headnote 3(a) is the inability of manufacturers and the Government of Guam to obtain timely and clear binding rulings from the U.S. Customs Service on proposed manufacturing operations. At present there is no way to know whether a headnote 3(a) shipment will have an acceptable duty-free domestic and foreign component ratio until it actually reaches a port of entry into the U.S. customs zone. And then the decision to approve or block a shipment can vary from one port to another, depending on the discretion of the local customs inspector. Quite frankly, I do not think Customs has been as cooperative on headnote 3(a) as they could be.

As an example, just this month, Customs issued a cursory denial of a binding ruling request submitted by the Government of Guam for a garment manufacturer interested in establishing a plant on Guam. After prodding from my office and Interior officials, Customs finally provided more detailed information on the negative decision. It seems Customs thought the garments to be produced would meet the "substantial transformation" requirements but could not be certain they would meet the 50 percent or greater domestic component requirement.

Customs failed to explain in their reply that they feel foreign material costs fluctuate so frequently that a headnote 3(a) item whose total value today shows 51 percent domestic components might not be compued at the same percentage when arriving at an entry port at a later date.

It was never my impression that Congress intended general headnote 3(a) to be a bureaucratic football. This section of the tariff schedules was supposed to stimulate industry and employment in the territories.

My bill, H.R. 4006, would reinforce this purpose. The measure would eliminate the close margin of eligibility by increasing up to 70 percent the allowable proportion of foreign materials and labor in the final product value. In the instance I just cited, instead of a 1-percent eligibility margin, the garment manufacturer would have a 21-percent margin under my bill. In light of Customs' apparent reluctance to issue definitive and binding rulings, my legislation would be a great incentive to potential headnote 3(a) maufacturers to begin operations in the insular areas.

H.R. 4006 is basically the same measure approved by this subcommittee and passed by the House in 1978. I think the incentive value of the bill might be improved, however, with certain further refinements, such as elimination of the temporary implementation period. Three years is hardly sufficient time for manufacturing concerns to establish a plant, acquire equipment, and hire and train employees, especially without assurance that duty-free operations could continue beyond the first years.

Also, some clearer allocation of quotas under the bill's import ceiling should be determined. With your concurrence, Mr. Chairman, matters such as these can probably be worked out in further discussions after today's hearing.

Mr. Chairman, Guam has 8-percent unemployment; almost 11,000 of our 127,000 people receive food stamps. With intensified pressure to limit Federal spending, Guam and the other insular areas must depend increasingly on existing and potential new manufacturing con-

cerns for employment and revenue. I believe the percentage change resulting from passage of H.R. 4006 would allow more competitive pricing of headnote 3(a) items and help to eliminate some of the customs ruling difficulties.

In the past and again today, the administration has not objected to this legislation. I ask the subcommittee's favorable consideration of H.R 4006. I would be pleased to answer any questions you might have or provide additional information you might require.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you, sir, for your very informative statement and your helpful attitude in working out these problems.

We will cooperate with you in seeing if we can't work them out.

Mr. Evans?

STATEMENT OF HON. MELVIN H. EVANS, A DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS

Mr. EVANS. Thank you, Mr. Chairman.

First, at the outset, let me say I am thankful to appear here in connection with a bill very important to the Virgin Islands.

I would like to say at the outset that to the extent I have knowledge of the items discussed by my colleague, Mr. Won Pat, I certainly wish to associate myself with those remarks, and particularly with the remark that 3 years is a very temporary thing; and we would certainly hope that it could be considered to make it longer, if not permanent.

Mr. Chairman, H.R. 4006 would amend general headnote 3(a) of the Tariff Schedules of the United States to permit duty-free treatment of products manufactured in the insular possessions, provided that such products contain no more than 70 percent foreign parts or materials. With the exception of watches and watch movements, which have already been granted this treatment under Public Law 94–88, products manufactured under headnote 3(a) can contain no more than 50 percent foreign parts or materials.

H.R. 4006 further provides for quotas on articles produced using the proposed 70–30 ratio. The quotas are determined using a formula identical to that in use for the Generalized System of Preference Countries. The GSP formula places a limit of $25 million, factored in a limit of $25 million, factored in a ratio to gross national product, for each product imported into the United States.

Mr. Chairman, since you already have my prepared statement before you, I will not go through the entire thing.

Mr. GIBBONS. Your entire statement will be included in the record.

Mr. EVANS. Thank you.

It is important to know that manufacturing at the present time accounts for only 8 percent of the territory's nonagricultural wage and salary employment.

We do have two very large manufacturing giants, so to speak. Hess and Martin-Marietta, but basically the rest of it accounts for just 8 percent of it. We depend to a large extend on tourism. Tourism is wonderful and takes advantage of the resources we have, but tourism is very fickle; it is at the mercy of the airlines.

I could add, I have to go home once or twice a month and it is getting to be quite a chore now, what with layovers and missed baggage and delays and so forth. We have to protect against that.

The decision was made long ago to try to develop small, light industry in the Virgin Islands.

Now, to the extent that we are able to create a permanent or very definite system, to what extent people who come into an established business can decide to do it and make it profitable.

The U.S. Customs Service, in order to exclude industries which might just pass through the territories to escape duties, rigorously and properly enforce the requirement that headnote 3(a) products be substantially transformed from materials imported in the territory from a foreign country.

I wish to emphasize that because I do know that one of the concerns we have in the Islands is that we do not want the Virgin Islands to become a conduit for the passing of the materials into the United States improperly; and I am aware Customs is very concerned about that.

We do our best to make sure this does not happen. In this connection, I might add that while we would, I suppose, have to accept it if it were made law, the provision recommended by the administration of a 25 percent added in the Virgin Islands in the product, we would prefer our way, for the simple reason that one of the big items in an offshore area such as the Virgin Islands in getting products to the United States is shipping; and that is something over which we have no control.

In the past it has been difficult to use language which the administration suggests, and we expect the same type of difficulty in the future.

We would like to point out, while the U.S. Generalized System of Preferences specifically provides that insular possessions are to receive no less favorable treatment than eligible countries, the fact is that with fewer natural resources and higher labor cost, the territories need more favorable treatment to compete with foreign development areas.

We have not taken into consideration the fact we have a minimum wage, while there are areas in the Caribbean that do not. We have OSHA; we have EPA, all of which add to our costs and make us not competitive unless some special consideration is given.

I would also like to point out that recently the GATT provision have in many cases decreased the import duties and made the Virgin Islands even less competitive. This I will talk to very briefly when we come to the question of rum, which is going to be heard also.

I would like to tell the committee that between 1971 and 1978, 29 manufacturing firms ceased operations in the territory, chiefly because the original 50–50 relationship which existed no longer made it possible to operate; with the foreign inflationary trend and the devaluation of the dollar, it became impossible to become competitive using the 50–50 relationship.

In order to guard against abuse, the provision was stuck in to make this temporary and also that at the end of the first full year under liberalization, a complete report on the effects of the amendment will be prepared by the U.S. Departments of the Treasury, Commerce, and Interior.

In summary then, Mr. Chairman, we believe that the original intent of legislation creating headnote 3(a) has been frustrated by changes in relative cost and duty levels. This has significantly reduced the attractiveness of the territories to manufacturing industries.

The proposed legislation will attract more industry to the territories and help them to develop greater self-sufficiency. Perhaps more

important, the change contemplated by this proposed legislation would not reduce existing requirements that eligible products be substantially transformed in the territories. Instead, it would permit a reduction of selling prices which benefit the U.S. consumer as well as the people of the territories.

In that connection, there is one simple bill I also introduced, H.R. 6687, and this applies to the rum industry which we have in the Virgin Islands and which is faced with a peculiar problem. Since 1966 the Virgin Islands has been out of the production of sugar and molasses. As a result, we have had to import our molasses. In the past it has been imported mostly from Puerto Rico, but Puerto Rico itself has its sugar industry declining, and hence is unable to supply us with molasses. Consequently, it has to be imported from other areas.

Under the present system, the President has the authority to declare a nation previously eligible for general preference not eligible anymore. Because of the time lag from the time the molasses is purchased and the rum is manufactured, and then the rum is aged as much as 4 years, there is a distinct possibility, in fact even a probability, that molasses which is brought into the Virgin Islands for the production of rum but is not exported as rum in the United States for a long time may get caught in this fact, that the President has declared that particular country no longer eligible.

Customs has taken the position that since there is usually only one storage tank there is no way to avoid commingling the molasses, and if any portion whatsoever comes from a foreign country, then as far as they are concerned the entire batch is foreign.

It is easy to see the jeopardy this places the rum industry in, that they could have their entire inventory of rum declared not meeting the requirements because of the foreign content of molasses. This is particularly important because the rum industry has taken a beating already from the provisions of the GATT and, as I mentioned earlier, the EPA requirements, which are compelling all sorts of environmental protection devices which are costly, with the OSHA provisions, with the minimum wages which apply, the rum industry faces very hard going, and this could very well be almost the coup de grace if it went into effect.

Mr. Chairman, I have received a letter which I would like to include in the record, a copy of a letter addressed to me from Milton B. Seasonwein, vice president of the Virgin Islands Rum Industry in support of H.R. 6687, and in addition to that, a copy of a letter from Salvatore E. Caramagno, Director of Classification and Value Division, U.S. Customs, is also enclosed. They substantiate the points I have just made.

I thank you very much, Mr. Chairman. I would be glad to answer any questions you may have.

[The prepared statement and letters follow:]

STATEMENT OF HON. MELVIN H. EVANS, A DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS

Mr. Chairman and honorable members of the House Ways and Means Subcommittee on Trade, I am grateful for this opportunity to testify on H.R. 4006 and H.R. 6687, two legislative proposals which have substantial bearing on the future economic security of the United States Virgin Islands.

H.R. 4006 would amend General Headnote 3(a) of the Tariff Schedules of the United States to permit duty free treatment of products manufactured in the insular possessions, provided that such products contain no more than 70 percent foreign parts or materials. With the exception of watches and watch movements, which have already been granted this treatment under Public Law 94–88, products manufactured under Headnote 3(a) can contain no more than 50 percent foreign parts or materials.

H.R. 4006 further provides for quotas on articles produced using the proposed 70–30 ratio. The quotas are determined using a formula identical to that in use for the Generalized System of Preference Countries. The GSP formula places a limit of $25,000,000, factored in a ratio to Gross National Product, for each product imported into the United States.

To underscore the importance of amending Headnote 3(a), I would like to discuss its role in the territorial economy.

A major thrust of the Virgin Islands' economic development program has been an effort to diversify its economic base. Traditionally, tourism has been the principal industry of the Islands; however, tourism is a seasonal and cyclical business closely tied to the performance of the United States economy and the availability of visitor's discretionary income. The other major economic sector in the Virgin Islands is government. Public sector employment currently accounts for approximately 50 percent of non-agricultural wage and salary employment in the Territory. Expansion of the private sector, and particularly manufacturing, must remain a top priority if the Virgin Islands are to develop a stable, viable, economy.

Manufacturing currently accounts for only 8 percent of the Territory's non-agricultural wage and salary employment. The serious shortage of water, the high energy cost and unreliable power supply, the scarcity of raw materials, and the Islands' distance from the United States mainland are all facts that have hampered industrial development. Of further concern is the necessity for attracting the kind of industries that are compatible with the tropical beauty and fragile insular ecology which have made the Virgin Islands such an attractive destination for tourists.

The availability of Headnote 3(a) has created a valuable mechanism for attracting light assembly type industries to the Territory. Manufacturers operating under Headnote 3(a) have created non-polluting labor intensive industry, which offers increased year round employment opportunities to Virgin Island workers. This special tariff treatment was first provided in 1954 under Headnote 3(a) of the Customs Code. It led to the creation of a major watch assembly industry which now employs approximately 720 workers. In addition, the manufacture of jewelry, cosmetics, pharmaceuticals, dyes, liquors and textiles has also been established. Currently, there are 16 such firms, with employment of approximately 170 persons. While these numbers may seem small, they constitute 26 percent of the manufacturing done in the Territory. The balance of the manufacturing jobs are primarily provided by two industrial grants, Hess Oil and Martin Marietta. Therefore, virtually all the light manufacturing is done by Headnote 3(a) firms, and the tariff provision has played the key role in the establishment of this sector.

A July 1979 study funded by the United States Economic Development Administration and prepared by Robert Nathan Associates for the Virgin Islands Department of Commerce analyzed the Headnote 3(a) provision. Noting that the Headnote 3(a) advantage placed the Virgin Islands in a uniquely competitive position with other Caribbean sites, the Nathan study further observed that "United States tariffs are generally low and getting lower and at the same time depreciation of the United States dollar is increasing the competitive cost of foreign materials and components. Both undermine the incentive value of Headnote 3(a)" and that "an effort should be made to broaden its applicability by permitting duty-free entry of all dutiable products up to 70 percent of the sales value of the product."

The Nathan study has quite accurately outlined the problem that has arisen under the present provisions of Headnote 3(a). The United States Customs Service, in order to exclude industries which might "pass" products through the territories to escape duties, rigorously and properly enforces the requirement that Headnote 3(a) products be substantially transformed from the materials imported into the territory from a foreign country. The manufacturer is, in effect, faced with a requirement that the value (or wholesale price) of his product upon importation into the United States must be at least double the cost of any

foreign materials contained. This requirement presents no problems as long as the price of competitive products is equivalent or higher. As his costs of importing foreign goods has increased through inflation and dollar devaluation, his final price, including the 50 percent value-added, has made him less competitive in the market place. The competition offered by countries under the Generalized System of Preference has further undercut the Virgin Islands Headnote 3(a) manufacturer. GSP eligible products may be imported duty-free into the United States. While the United States Generalized System of Preferences specifically provides that insular possessions are to receive no less favorable treatment than eligible countries, the fact is that with fewer natural resources and higher labor costs, our territories need more favorable treatment to compete with foreign developing areas.

A June 1979 Virgin Islands Department of Commerce study further documents the consequences of the erosion of the Headnote 3(a) benefit. Between 1971 and 1978, 29 manufacturing firms ceased operations in the Territory. Of this number, 23 firms had been operating under Headnote 3(a). These defunct Headnote 3(a) firms had produced a variety of products, including textiles, jewelry, chemicals, glass products and toiletries. The study concluded that the Headnote 3(a) firms were in the most precarious situation and were the least likely to remain a part of the Virgin Islands' long term business community if the law remained unchanged and the current world market conditions prevailed.

The Government of the Virgin Islands, through its Department of Commerce, has placed great emphasis on its economic development programs in recent years. Its goal is to create meaningful, stable, and productive employment for the Virgin Islands' labor force. Among the initiatives underway are the construction of a major containerport for St. Croix and the establishment of an industrial park program for the Territory. Needless to say, industrial park constuction is a futile exercise if the Territory can no longer attract light manufacturing. The liberalization of Headnote 3(a) will constitute a valuable tool in structuring an attractive incentive program for assembly type industry. The types of industries which the government hopes to attract include electronics assembly, plastic products, and electrical industrial apparatus.

These industries will offer skilled and semiskilled positions to Virgin Islanders and will not constitute in any way "pass through" industry. Our goal is not to create tax loopholes for foreign products requiring minimal local labor input. Rather, it is our expectation that the liberalization of Headnote 3(a) will contribute significant and tangible benefits to the Virgin Islands labor force and to the insular economy. To guard against abuse and to monitor the program, H.R. 4006 provides that at the end of the first full year under the liberalization, a complete report on the effects of the amendment would be prepared by the United States Departments of Treasury, Commerce, and Interior.

In summary, we believe that the original intent of legislation creating Headnote 3(a) has been frustrated by changes in relative costs and duty levels. This has significantly reduced the attractiveness of the territories to manufacturing industries. The proposed legislation will attract more industry to the territories, helping them to develop greater self sufficiency. Perhaps most important, the change contemplated by this proposed legislation would not reduce existing requirements that eligible products be substantially transformed in the territories. Instead, it would permit a reduction of selling prices, with benefit to the United States consumer, as well as to the people of the territories.

I would now like to briefly address H.R. 6687. The purpose of this proposed legislation is to assist the Virgin Islands rum industry in maintaining its duty free entry into the United States. Rum production is an important industry in the Territory, for as you are probably aware, under the provisions of the Revised Organic Act, the Territory receives the $10.50 per proof gallon excise tax directly into its treasury on rum manufactured in the Territory and shipped to the United States. In 1979, the Virgin Islands received $32.8 million constituting 17 percent of net government revenues through this source. The returned excise taxes have been a major component of the Virgin Islands capital budget, enabling the government to construct such essential public facilities as hospitals and schools. Therefore, support of the Virgin Islands rum industry is of paramount importance to the Territory.

Currently, the Virgin Islands rum manufacturing is dependent upon foreign molasses. There is no sugar production in the Territory. The Virgin Islands rum producers import molasses either from Puerto Rico or G.S.P. countries which are allowed duty free treatment. Puerto Rico's sugar crop has been declining, however, and the local industry has had an increasing dependence on molasses

from G.S.P. sources. There is always the possibility looming that a country or commodity could be removed from the G.S.P. listing. If the Virgin Islands rum producers were to take delivery on G.S.P. eligible molasses, and the G.S.P. eligibility was eliminated, the result would be calamitous. Because the cost of blackstrap molasses constitutes such a major portion of the production cost, a midstream change would make the Virgin Islands rum ineligible for duty free entry at a competitive market price, even under a liberalized 70–30 ratio. H.R. 6687 would protect the industry from this risk.

Specifically, the provision of the law determining duty free eligibility is amended to include items imported into the insular possessions which are incorporated into the manufacturing process within 18 months of entry. The current provision allows duty free eligibility only at the time of entry into the United States and not at the point of importation into the Territory. This amendment will limit the risk to the Virgin Islands manufacturer in the event that G.S.P. components become ineligible during the duration of the manufacturing process after full production costs have been incurred. I strongly urge the Committee members to support this amendment.

Mr. Chairman, I would like to have included into the Subcommittee record a copy of a letter addressed to me from Milton B. Seasonwein, Vice President, Virgin Islands Rum Industries, Ltd., in support of H.R. 6687. In addition to this, a copy of a letter from Salvatore E. Caramagno, Director, Classification and Value Division, United States Customs to Mr. Cedric C. Nelthropp of the Virgin Islands Rum Industries, Ltd. is enclosed for the record.

VIRGIN ISLANDS RUM INDUSTRIES, LTD.,
Frederiksted, St. Croix, U.S. Virgin Islands, March 12, 1980.

HON. MELVIN H. EVANS,
House of Representatives, Cannon Building, Washington, D.C.

DEAR DELEGATE EVANS: I am writing on behalf of the Virgin Islands Rum Industries ("VIRIL") to express VIRIL's support for H.R. 6687, the bill you introduced to amend General Headnote 3(a) of the Tariff Schedules of the United States (TSUS), 19 U.S.C. § 1202.

The measure would eliminate the commercial risk which VIRIL and other firms that manufacture articles from GSP-eligible material which are entered into the United States under Headnote 3(a) now experience by excluding from the definition of "foreign material" material eligible for GSP treatment which is both (a) imported into the Virgin Islands (or other insular possession) before its GSP eligibility is removed, and (b) converted into a manufactured article within 18 months of that arrival. The bill, which would not impose any additional burden on the taxpayer, would assist VIRIL to continue to produce rum in the Virgin Islands and to thereby continue to contribute significantly to the economy of the Virgin Islands.

VIRIL is the largest producer of rum in the Virgin Islands, accounting for over 95 percent of the Virgin Islands' total output. VIRIL employs approximately 70 persons and generates a significant payroll each year. The rebates each year from the Federal government to the government of the Virgin Islands of the Federal excise tax on VIRIL rum is approximately $23–28 million, or some 15–20 percent of the Virgin Islands' annual revenues.

H.R. 6687 is particularly important to VIRIL as it could affect the tariff treatment and hence the wholesale price of the rum we produce. Let me explain why. The essential raw material used in the production of rum is blackstrap molasses, a by-product of the cane sugar industry. The value of the raw molasses currently comprises well over half of the cost of our rum. Once the rum is distilled in our Virgin Islands plant, it may be aged up to four years before it is entered into the United States Customs territory.

VIRIL rum is currently imported into the United States duty free under General Headnote 3(a). To qualify for Headnote 3(a) treatment, no more than 50 percent of the value of the rum may be comprised of foreign material. Under current law, foreign material does not include material which, at the time the article is entered into U.S. Customs territory, could be imported into the Customs territory from a foreign country and entered duty free. Thus, although molasses may not be considered foreign material at the time we receive it in the Virgin Islands, it could lose its nonforeign status between that time and the time our rum is entered into the United States Customs territory, thereby disqualifying the rum from Headnote 3(a) treatment.

Until recently, this has not posed a problem for VIRIL because we have procured our molasses from Puerto Rico. VIRIL purchased most of its molasses from Virgin Islands sources until the 1960's when sugar cane stopped being cultivated in the Islands. VIRIL was then forced to secure its molasses from Puerto Rico. Unfortunately, sugar cane cultivation is now disappearing in Puerto Rico with no prospect of a turn-around.

Since we are unable to obtain sufficient quantities of molasses either in the Virgin Islands, Puerto Rico or elsewhere in the United States (where molasses is used as a cattle feed supplement and the price has been steadily rising), VIRIL has had to consider purchasing molasses from neighboring Caribbean countries. In particular, VIRIL is looking toward foreign suppliers in the Caribbean whose molasses would presently be eligible to enter the United States Customs territory free of duty under the Generalized System of Preferences (GSP), General Headnote 3(c) TSUS, 19 U.S.C. § 1202. VIRIL's ability to enter into long-term supply contracts with such foreign molasses suppliers is, however, severely limited by the possibility that one or more of these supplier countries could be taken off the GSP list by the President with little notice for any one of a number of foreign policy or trade-related reasons.

In the event that molasses purchased by VIRIL loses its GSP designation, all molasses from that country already imported by VIRIL into the Virgin Islands would immediately be deemed "foreign material" under Headnote 3(a). And because the Virgin Islands are not within the Customs territory of the United States, any VIRIL rum made with such molasses and not entered into the United States could no longer qualify for duty-free entry under Headnote 3(a). Compounding this difficulty is the fact that the Customs Service has informed VIRIL that, under present law, it would be obligated to rule that the presence of any "foreign" molasses in VIRIL's Virgin Island molasses storage tank would make that entire tankload of molasses "foreign material" for purposes of Headnote 3(a). (See the Customs Service letter of January 10, 1980, which is enclosed as Attachment A). Therefore, if a country were removed from the GSP list, any rum made by VIRIL in the Virgin Islands with molasses from that country (and with any other molasses in VIRIL's storage tank at the same time as such molasses) would be ineligible for duty-free entry into the United States. This is particularly a problem vis-a-vis aged rum, which may not be entered into the United States for three to four years after distillation.

If VIRIL had to pay duty on Virgin Islands rum produced for the United States market, it would be unable to sell that rum because its price would be far higher than that of competitive products distilled within the Customs territory of the United States. Indeed, if VIRIL had to pay the tariff, the price charged for most of its rums would more than double. If VIRIL were forced to reduce or terminate the production of rum in the Virgin Islands, both VIRIL and the Virgin Islands would be the losers.

Enactment of H.R. 6687 will enable VIRIL to meet the new circumstances of a short supply of domestic molasses in the Caribbean and to undertake reasonable longer term business planning without incurring the risk of a major financial setback should the GSP eligibility of one or more foreign suppliers be eliminated on short notice. It will do so by excluding from the term "foreign material" that material which is both (a) eligible for GSP treatment at the time it is imported into the Virgin Islands (or other insular possessions); and (b) converted into a manufactured article (in our case, rum) within 18 months of that arrival. This amendment to Headnote 3(a) will reduce the risk of severe loss we now face without creating opportunities for abuse.

Enactment of H.R. 6687 will not result in the loss of any revenues now realized by the United States. Nor will it have any adverse impact upon domestic molasses producers, as molasses is already in short supply in the United States and prices are now escalating rapidly. Nor, we believe, will it have an adverse effect upon our chief competitors in the rum industry, those located in Puerto Rico, who are already within the U.S. Customs territory and, therefore, do not face the risks of tariffs on their rum should the molasses they use lose its eligibility for GSP duty-free entry. Enactment of your bill would eliminate a serious business risk which now hangs like a "Sword of Damocles" over the commercial viability of VIRIL's operations.

Finally, enactment would not impede the President's authority to use removal from the GSP list as a tool of foreign and trade policy. Quite the contrary, he would be able to take such action without simultaneously threatening the operations of United States citizens and enterprises in the Virgin Islands and

the other insular possessions. As such, enactment of the bill will be of great aid to VIRIL in its plans to continue the production of rum in the Virgin Islands and to continue to generate significant excise tax revenues for the Government of the Virgin Islands.

I want to thank you for introducing H.R. 6687 and to express our full support for your efforts to assure that it is enacted.

Sincerely yours,

MILTON B. SEASONWEIN,
Vice President.

ATTACHMENT A

U.S. CUSTOMS,
CLASSIFICATION AND VALUE DIVISION,
January 10, 1980.

MR. CEDRIC C. NELTHROPP,
Virgin Island Rum Industries Ltd.,
Frederiksted, St. Croix, U.S. Virgin Islands.

DEAR MR. NELTHROPP: This is in response to a letter submitted on your behalf by Mr. Jay Kraemer of Fried, Frank, Harris, Shriver & Kampelman concerning implementation of our ruling issued to you on March 21, 1979 (file 058880). A question is raised as to what method would be acceptable to Customs for purposes of identifying commingled molasses used in the production of rum entered under General Headnote 3(a), Tariff Schedules of the United States (TSUS).

Under the facts presented by Mr. Kraemer, your company maintains a single storage tank for molasses used in the production of rum. Physical segregation of molasses imported from multiple sources is impossible. To build another tank for this purpose would require significantly large expenditures for additional land acquisition and tank construction. Therefore, if molasses were imported from several beneficiary developing countries (BDC's) and other countries alike, it would have to be commingled in the Virgin Islands.

In addition to the problem of commingling, there is a potential lag-time of four years between the purchase of molasses and the entry into the United States of rum produced from that molasses. During that lag-time there is the possibility that the duty-free status of molasses under the Generalized System of Preferences (GSP) would change for one or all BDC's. Therefore, there is no certainty that the molasses will be eligible for the GSP at the critical time of the rum importation.

As stated in our ruling of March 21, 1979, molasses used in producing rum must qualify for duty-free entry under the GSP at the time of entry of the rum in order not to be considered "foreign" for purposes of General Headnote 3(a)(ii), TSUS. Among other requirements the molasses must be a product of a BDC in order to qualify for duty-free treatment under the GSP. The law and regulations do not provide for a substitution procedure such as in the drawback statute. Identification of molasses, in this case, may not be based solely on an accounting or a percentage procedure.

A first-in-first-out (FIFO) accounting procedure is permitted under section 313(a), Tariff Act of 1930, as amended, for commingled fungible materials. The use of FIFO, however, is restricted to commingled materials of the same dutiable value and rate of duty. In the event that they are not, then section 22.4(f) of the Customs Regulations provides that drawback shall be based first on the materials of lowest dutiable value and rate of duty. Under this procedure, the country of origin of the materials is not a significant factor.

It is our opinion that, for purposes of the GSP, the molasses must be identified as molasses actually produced and exported from a particular BDC. This is to make certain that the benefits of the GSP accrue to a BDC. It appears that commingling of molasses would necessarily destroy this identity. Therefore, such molasses used in rum production would not qualify for duty-free treatment under the GSP and would be considered "foreign" under General Headnote 3(a)(ii), TSUS.

Finally, the eligibility of molasses for duty-free treatment under the GSP is subject to annual review by the President. The Customs Service is not able to provide any degree of certainty as to future GSP treatment for molasses.

Sincerely,

SALVATORE E. CARAMAGNO,
Director.

AN ADDENDUM TO THE TESTIMONY OF HON. MELVIN H. EVANS, DELEGATE TO CONGRESS, U.S. VIRGIN ISLANDS

The following information has been prepared to support H.R. 4006, which as proposed would permit duty free treatment of products manufactured in the insular possessions, provided that such products contain no more than 70 percent foreign parts or materials. The declining value of the United States dollar relative to the currencies of our major foreign suppliers has made it increasingly difficult for actual and potential Virgin Islands producers to qualify under Headnote 3(a) of the United States Tariff Schedule. H.R. 4006 provides sorely needed relief to lost competitive advantages and protection attributable to external sources largely out of the control of Virgin Islands producers affected by Headnote 3(a). Table II organizes foreign exchange information to illustrate the degree of negative impact suffered by local producers as a result of the dollar decline. For example, since the Swiss franc has appreciated, approximately 50 percent relative to the United States dollar in the past 7 years, Virgin Islands producers have had to increase their market price/production costs up to 50 percent or no longer qualify for protection under Headnote 3(a). The implication that the production mix and processes which have been employed by Virgin Islands producers may no longer qualify for tariff relief is disheartening. Passage of H.R. 4006 in a form which allows a 70/30 foreign to domestic material value ration allows producers to maintain a competitive position in a small but volatile market. Hopefully, the statistics reveal the Virgin Islands' need for tariff adjustment, thus ensuring that income and employment opportunities are not jeopardized for the United States citizens of the Virgin Islands.

TABLE I.—HEADNOTE 3(A) COMPANY INFORMATION

Company	Product	Country	Currency
1. Transducer Technology	Transducers	United States	U.S. dollar.
2. Blue Carib Gems	Raw stones	India, Brazil, South Africa	Rupee, gruziero, rand.
3. Caribbean Jewelry	Costume jewelry	Czechoslovakia, Taiwan, Hong Kong.	Deutsche mark, NT dollar. HK dollar.
4. Cruzan Chemical	Raw chemical pigments	Switzerland, France Germany	Swiss, Franc, French franc, deutche mark.
5. Federal Pharmacal	Pharmaceuticals	Denmark, Switzerland, Italy	Kroner, Swiss franc. lira.
6. Gold Manufacturing	Gold bullion jewelry	France	French franc.
7. Pralex Corp	Pharmaceuticals	Germany, Italy, Holland	Deutsche mark, lira guilder.
8. V. I. Manufacturing	Textiles	Czechoslovakia, Italy	Deutsche mark, lira.
9. V. I. Perfume	Perfume and cologne	United States	U.S. dollar.
10. Vista Laboratories	Sulfurs	Poland, Taiwan	———, NT dollar.
11. Vitex Corp	Woven wool	Italy, Romania	Lira, ———.
12. West Indes Bay	Toiletries (baskets)	Phillipines, Japanese	Peso, yen.
13. Mount Eagle Corp	So. Comfort concentrate	United States	U.S. dollar.
14. Island Chemical	Pharmaceutical, durg	Germany, England Netherlands.	Deutsche mark, pound, guilder.
15. Artais International	Not in operation.		

TABLE II—MARKET RATE/PAR OR CENTRAL RATE FLUCTUATION (aa) [1] [2]

Country	1973	1974	1975	1976	1977	1978	1979	1980	Percent 1973-80 [3]	Relative United States [4]
Germany	3.261	2.950	3.070	2.745	2.557	2.382	2.281	2.289	+29.9	+35.7
Denmark	7.588	6.918	7.232	6.724	7.018	6.631	7.068	7.156	+5.7	+13.6
Italy	733.36	755.12	800.20	1,016.60	1,058.68	1,080.99	1,059.13	1,062.79	−44.9	−32.8
Switzerland	3.913	3.110	3.067	2.847	2.429	2.111	2.081	2.137	+45.4	+49.9
Taiwan	45.841	46.525	44.150	46.150	46.159	46.900	47.556	47.498	−3.6	+5.0
France	5.680	5.442	5.251	5.774	5.715	5.446	5.296	5.356	+5.7	+13.6
Czechoslovakia (pegged to German deutache mark by contract.)										
Poland	—	—	—	—	—	—	—	—	—	—
United Kingdom	.519	.521	.578	.682	.637	.640	.592	.580	−11.8	−2.4
Netherlands	3.704	3.069	3.147	2.855	2.770	2.565	2.510	2.528	+25.8	+32.0
Japan	337.78	368.47	357.23	340.18	192.53	253.52	315.79	314.20	+7.0	+14.8
Hong Kong	—	—	—	—	—	—	—	—	—	—
Brazil	7.504	9.103	10.618	14.343	19.496	27.254	65.026	57.748	−769.6	+705.3
India	9.808	9.809	10.462	10.318	9.971	10.668	10.416	10.581	−7.9	+1.1
South Africa	.810	.844	1.018	1.010	1.056	1.133	1.089	1.076	−32.8	−21.7
Romania	—	—	—	—	—	—	—	—	—	—
Phillipines	8.129	8.661	8.789	8.642	8.964	9.620	9.780	9.770	−20.2	−10.1
United States	1.206	1.224	1.171	1.162	1.215	1.303	1.317	1.316	−9.1	−9.1

[1] Exchange rate data obrained from 1980 IMF International Financial Statistics.
[2] Exchange rate per SDR in end of year period except January 1980 rate.
[3] Exchange appreciation (+) or depreciation (—) in own local currency/SOR.
[4] Exchange appreciation (+) or depreciation (—) in own local currency/SOR relative to the U.S. dollar/SDR (in percentage terms).

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 24, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Ways and Means Committee, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed please find additional testimony to accompany my original testimony of March 17, 1980 pertaining to H.R. 4006 and H.R. 6687.

I would appreciate these materials being included in the record.

Thank you very much.

Sincerely,

MELVIN H. EVANS.

Enclosures.

ST. THOMAS-ST. JOHN CHAMBER OF COMMERCE, INC.,
March 18, 1980.

CHAIRMAN,
Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the St. Thomas-St. John Chamber of Commerce, I am presenting our views on H.R. 4006 and H.R. 6687, legislation related to products manufactured in the Territories of the United States and shipped to the United States mainland.

The Chamber of Commerce, representing more than 400 businesses on the islands of St. Thomas and St. John, supports the passage of both proposals as vital links in maintaining and expanding a viable manufacturing sector in the U.S. Virgin Islands.

In outlining our position on this legislation, it is important for us to stress two key points. First, virtually every business in the U.S. Virgin Islands is a small business. Second, small business in the U.S. Virgin Islands is a fragile entity.

Not only does it face every other problem and obstacle confronting stateside small business, e.g., financing, inflation, regulations and taxes, the business community of the U.S. Virgin Islands often suffers from the very factors that make the Caribbean so attractive to others—a tropical climate, off the beaten path and a slow pace of life.

Separated from main sources of supplies and commodities by miles of ocean, the Virgin Islander in business is often a captive of common carriers, faced with grossly irregular deliveries, escalating shipping rates and frequent breakage, loss and pilferage.

Add to this basic supply problem the fundamental dependence of the island economy on tourism and the severe effect of the tropical environment on equipment, machinery and vehicles, one begins to believe the old island saying that a very small businessperson in the Virgin Islands is entitled to at least one bankruptcy.

By increasing the allowable percentage of foreign parts or materials from 50 percent to 70 percent under General Headnote 3(a) of the Tariff Schedules of the United States for U.S. Virgin Islands manufactured products marketed in the U.S., H.R. 4006 will bring all U.S. Virgin Islands manufacturers back to parity after inflation, devaluation of the U.S. dollar and relaxation of U.S. tariff regulations related to most favored nations have virtually eliminated the incentive that U.S. Virgin Islands firms previously had. This increase has been already granted for watch assembly manufacturers in the territories of the United States.

The erosion of this incentive is reflected by the termination of operation by 23 island manufacturers involved in Headnote 3(a) eligible activities between 1971–78.

Unless H.R. 4006 is adopted, we fear that not only will additional firms close their doors but few if any new manufacturers will establish operations on the islands, further compounding our difficult economic and unemployment problems.

H.R. 6687 will allow up to an 18 month period for Headnote 3(a) raw materials to be incorporated into the manufacturing process in the territories of the United States before the finished product is shipped to the United States.

Since such raw materials are obtained from conutries under the Generalized System of Preferences, manufacturers in the U.S. Virgin Islands and the other territories need the latitude of several months in which to handle the incoming commodities before the manufacturing process is completed and the finished product is transported to the United States. Otherwise, the firm could be caught

with unuseable raw materials if the United States withdrew the G.S.P. designation from a particular country supplying a raw material to a territorial manufacturer.

Both of these proposals are important to the existing manufacturing firms now on our islands as well as serving as an incentive for the establishment of future companies. As the public and private sectors of the U.S. Virgin Islands work together to bring significant diversification to our tourism-dependent economy, the support of this Committee and the United States Congress through enactment of this legislation is requested and will be deeply appreciated.

Sincerely,

WILBUR LAMOTTA, *President.*

Mr. GIBBONS. Thank you.

As I stated in the beginning, the job that you two gentlemen do to represent these areas is outstanding and we commend you. We know it is tough. We are all interested in our own areas; we tend to forget that we owe special obligations to people in your territories, and we think you do a very fine job in reminding us of that obligation and of representing those people here in this Congress.

And the testimony both of you have given today is very helpful in understanding the problems. I would hope that we could work out these differences and I am sure that with your continued guidance we will want to work these out.

Mr. Vander Jagt?

Mr. VANDER JAGT. Thank you, Mr. Chairman.

I want to join you in welcoming our good friends, Tony Won Pat and Mel Evans to the committee. I agree with you that they do an outstanding job of representing their areas. I think they have done an outstanding job this morning in making the case for this legislation. I hope the committee can be just as successful in working with you this year as it was last year, and I hope we can overcome whatever problems remain on the other side of it.

Mr. WON PAT. Thank you, Mr. Chairman. I think you are very, very gracious indeed.

Mr. EVANS. I certainly want to add my thanks for your very kind words.

Mr. GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman.

I, too, want to thank Tony and Mel for their splendid testimony.

As I understand it, Tony, your bill, on which Mr. Evans is a cosponsor, is the same bill as this subcommittee and the House passed last year, except that the Rostenkowski amendment has been deleted. Is that correct?

Mr. WON PAT. That is correct.

Mr. FRENZEL. And, Mel, your bill, H.R. 6687, is the same bill, except that you want to get into the rum problem in addition?

Mr. EVANS. Yes, it is a very simple bill, attempting to take care of the rum problem, the molasses problem.

Mr. FRENZEL. Mr. Chairman, I share the other members' enthusiasm. I remember last year we went through the agonies of trying to get a bill we all thought was acceptable. We were disappointed when the Senate didn't pass it. I hope we can pass it this year.

I would say, with respect to the Evans bill, I am extremely disappointed that somebody, the Customs Service, I guess, makes the interpretation that somehow what was duty free at one point becomes dutiable if you ship it to the United States in a different form.

I always thought you were part of the United States and I continue to suffer under that delusion, and I think the idea of assuming that it should be different in case a country should lose GSP status or other status is absurd.

So, if we have to pass your bill to impress that on the Services, I guess we will, but it is a little disappointing that they would put you to having to deliver this bill to us.

Mr. EVANS. Well, I certainly agree with you, but as my colleague, Mr. Won Pat pointed out, sometimes an administrative rule is fairly arbitrary, and we have to live with them until Congress rules other-otherwise.

Mr. FRENZEL. I might add, that is the kind of thinking that has made the legislative veto—which is a somewhat doubtful tool—has made it inevitable, I guess.

I think you both. I hope your bills get passed.

Mr. GIBBONS. Mr. CAREY?

STATEMENT OF RAYMOND J. CAREY, PRESIDENT, CRUZAN CHEMICALS, INC., ST. CROIX, VIRGIN ISLANDS, ACCOMPANIED BY JOHN S. MONAGAN,

Mr. CAREY. Thank you, Mr. Chairman, and I would like to add to the kind words by Dr. Evans, that he probably doesn't realize it, but 10 years ago when he was Governor we started our firm down there; he probably wouldn't even remember me.

However, my name is Raymond J. Carey, and I am president of Cruzan Chemicals, Inc., located at Peter's Rest, St. Croix, U.S. Virgin Islands.

I am testifying today in support of H.R. 4006 on behalf of Cruzan Chemicals, Inc., a manufacturer of dyes for the textile industry which are classified as benzenoid chemicals in the Tariff Schedules of the United States, Annotated (1980) under schedule 4, part 1-C.

Cruzan Chemicals, Inc., is a small business concern incorporated under the laws of the U.S. Virgin Islands and has been operating for approximately 10 years on St. Croix. Our employees range in number from 12 to 15 persons, depending on production. The company contributes annually approximately $785,000 to the economy of the Virgin Islands. Approximately $125,000 goes to employees, $255,000 to expenses on St. Croix, and approximately $530,000 to the Virgin Islands Government for customs duties, excise, gross receipts, and payroll taxes.

The firm imports benzenoid dye crudes from foreign sources and processes and ships them to the U.S. mainland for sale. The products are currently entered duty free under general headnote 3(a) of the Tariff Schedules of the United States because they meet the requirement of not having more than 50 percent of foreign material in the finished product.

The 50-percent requirement measurement is currently appraised by U.S. Customs as 50 percent of the registered American selling price, ASP, of the benzenoid product.

The Trade Agreements Act of 1979 eliminated the American selling price as a basis for customs appraisal. No alternate method was estab-

lished for benzenoid products of insular possessions, except the standard transaction value currently used.

Under the Trade Agreements Act of 1979, title II, which, incidentally, includes pharmaceuticals manufactured in the insular possessions and shipped to the United States, will be subject to the same duty rates and treatment as similar imports from foreign sources.

On or about July 1, 1980, U.S. Customs will evaluate all imports, including products of the insular possessions, under a value hierarchy, a progression consisting of six bases of value: transaction value, transaction value of similar merchandise, deductive value, computed value and value if other values cannot be determined.

Customs gives first preference to transaction value or invoice value. It is our judgment that Customs will select transaction value as the logical appraisal method for products of insular possessions.

Under general headnote 3(a), benzenoid chemicals that currently meet the 50-percent test using ASP as the apprasial measurement will not be able to meet the new standard 50-percent requirement of the transaction value or any of the bases mentioned above and survive.

Our type of industry is capital intensive, subject to high raw material costs, while the market value of many of the products is depressed in the United States. The world inflation rate and the escalating costs of benzenoid raw material—dependent on oil refinery products as a base—presents us with ever-increasing foreign raw material costs.

Under present cost and under general headnote 3(a) as presently written, we would have to invoice at twice the cost of the foreign raw material.

For example, if the foreign content in our product were $10 per pound, we would have to invoice at $20.01 net per pound, and within a month, for example, if the foreign content cost rose to $15 per pound, we would then have to invoice at $30.01 net per pound. The product would be effectively priced out of the market and we would cease operations.

General headnote 3(a) now permits watch assemblies in the insular possessions containing as much as 70 percent of foreign parts to enter the United States duty free.

We submit that this provision for the watch industry alone is discriminatory; all industries operating in insular possessions should be entitled to equal treatment, since all face the same problems.

In reviewing H.R. 4006, the only remedy for our type of industry appears on page 4, subpart A; namely, "Temporary Tariff Treatment of Certain Products of the Insular Possessions."

We support temporary relief as opposed to no relief, but we would prefer the same treatment as the watch industry received and have legislation on a permanent basis to justify further expansion for facilities and work force.

There has been fear expressed in the past that by allowing a 70-percent minimum of foreign content, so-called post office box industries would be created. Under present general headnote 3(a), U.S. Customs determines if the product is, first, a product of the insular possession and, second, if it meet the foreign content of not more than 50 percent, versus the appraised value. Customs currently monitors insul industries by physical inspection, audits and reports.

Under general headnote 3(c) of the TSUS, countries designated "beneficiary developing countries" receive special duty treatment for purposes of the general system of preferences, GSP. When eligible articles are admitted into the United States, they receive duty-free treatment. The light industries in the U.S. insular possessions should receive more favorable treatment than the GSP nations.

In conclusion, we support H.R. 4006 as a temporary remedy or relief in law because time is running short for benzenoid and other light industries in the insular possessions. We hope and trust that the temporary time provided will allow a bill of a permanent nature to correct the present inequities in general headnote 3(a).

This bill will help to maintain the competitive position of light manufacturing industries, stimulate growth in the private sector and contribute taxes to the insular governments and income to the residents of the possessions.

Mr. GIBBONS. Thank you, Mr. Carey, and thank you for bringing this matter to our attention.

We thank the panel. We are glad to see our friend, John Monagan, here.

John, we welcome you back.

Mr. MONAGAN. Thank you. I don't have the same compulsion to speak that I had when I was in your position, so I won't impose on your time, Mr. Chairman.

I would simply say I agree with everything that the witnesses have said here.

Mr. GIBBONS. Well, you were always very effective and one reason you were very effective was because you had something to say, and you said it briefly.

Mr. MONAGAN. I hope I have one more opportunity to be effective.

Mr. GIBBONS. Thank you all for coming.

Mr. FRENZEL. Mr. Chairman, when the bill is passed, the subcommittee will look forward to an invitation to inspect all of the good works we have done.

Mr. MONAGAN. Including the rum factory.

Mr. FRENZEL. Exactly, and maybe some samples.

Mr. GIBBONS. Before you all leave, John, John Monagan, let me have your attention. We will probably have to amend this bill to change its effective date, because such a time has elapsed; and if any of you have any objections to it, maybe you ought to be heard on that subject right now.

The effective date would apply for the period of January 1, 1979, through December 31, 1981.

Mr. MONAGAN. That should be changed to begin July 1, 1980.

Mr. GIBBONS. You think that should be changed?

Mr. EVANS. Definitely. We didn't think it would get through early this year. July 1 or January 1 of 1981, either July 1 of 1980 or January 1 of 1981.

Mr. GIBBONS. Just as long as we don't shorten the bill, but just move it forward.

Mr. CAREY. Excuse me, but July 1, 1980, may be very important for benzenoid because if the American selling price is off by July 1, then we would have to shut it down for 6 months.

Mr. GIBBONS. We will hope we can get it through Congress by that time. You all don't want us to have to reliquidate all of the bills that

have come in since the time the bill was introduced, and that is the change we are probably making in it.

Thank you very much.

Mr. GIBBONS. We are going to hear witnesses on H.R. 5961 at another date; that is the LaFalce bill.

The next bill is H.R. 5829 by Mr. Hamilton, for the relief of the Foundry United Methodist Church.

Mr. Hamilton, you may proceed as you wish, and we are certainly glad to have you here.

STATEMENT OF HON. LEE H. HAMILTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HAMILTON. Thank you, Mr. Chairman and members of the subcommittee.

This is a very simple bill; it simply requests that we provide a duty-free entry for six bronze bells that were imported by the Foundry United Methodist Church of this community.

My statement, I think, need not be read; it tells you a little about the Foundry United Methodist Church. I know the administration has some objection to the bill on the basis that a domestic concern was an alternative source for the church bells.

The response that the church makes to that is that the tonal quality of the European chimes was such that they felt that the American producer was really not of the same quality or really a competitor with the European firm.

So, we ask for this special consideration and we recognize it is special consideration on the basis of the fact that it is a charitable institution, and that the bells of this quality could not have been purchased in the United States, so they did have to go to Europe for them. We ask that the subcommittee consider carefully our request for the duty-free entry of the chimes.

[The prepared statement follows:]

STATEMENT OF HON. LEE H. HAMILTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. Chairman and Members of the Subcommittee on Trade, I appear before you today in support of H.R. 5829, a bill which I have introduced to provide for the duty-free entry of six bronze bells imported by Foundry United Methodist Church. These bells are now installed in the belfry of the church, which is located at 16th and P Streets in downtown Washington.

Foundry United Methodist Church is an historic church in the District of Columbia, initially established in 1814 by iron workers in a foundry located on the waterfront in Georgetown. The congregation first worshipped in the foundry itself, and hence the name, which the church retained when its location was changed, first to 14th and G Streets, and finally in 1903 to its current sanctuary at 16th and P Streets.

Foundry is an urban, downtown, integrated congregation seeking to serve the needs of its inner city neighborhood. It has many programs of outreach to the residents of that area, ranging from a preschool educational program to programs for feeding the elderly.

The bells, which are the subject of this bill, were dedicated and first rung as a part of the nation's bicentennial celebration on July 4, 1976. They are rung for worship services on Sunday mornings, at noontime daily, and at other times of celebration. The bells have a unique tonal quality which motivated their purchase from the Ruetschi Foundry in Aarau, Switzerland. When Foundry Methodist Church purchased the bells, they had mistakenly assumed that church bells could be imported duty-free as religious articles intended for religious use.

Instead, they were obliged to pay a duty before the bells could be released from customs.

Mr. Chairman, I understand that the duty involved is a little over $2,000 and that the Subcommittee on Trade has in the past provided for duty-free entry of bells for charitable institutions. I most respectfully request that H.R. 5829, to provide for the duty-free entry of the bells for Foundry United Methodist Church, be favorably reported by this distinguished Subcommittee.

Mr. GIBBONS. Thank you.

Mr. HAMILTON. And, of course, I ask that my statement be put into the record.

Mr. GIBBONS. Your full statement will be included in the record, and we appreciate your interest in this matter. These are the kinds of tough problems that Members have to face every now and then.

Mr. HAMILTON. It is a very small sum of money, Mr. Chairman, but quite large in terms of a total budget of a charitable institution, and action by the subcommittee and the committee and the House would be very much appreciated.

Mr. FRENZEL. Mr. Chairman, I remember that in the case of an organ last year, we were obliged to override the objections of the administration, who felt that there was something comparable. But, in that case as in yours, there was quite a distinction, quite an artistic distinction, between the two products, and I hope the committee will act, too.

I thank you.

Mr. HAMILTON. Thank you very much.

Mr. GIBBONS. The staff has called to my attention that we have a witness here on H.R. 5875, Mr. George Rosenfield, who has an important engagement.

Please come forward and we will hear you now.

STATEMENT OF GEORGE G. ROSENFIELD, PRESIDENT, TASCO SALES, INC., MIAMI, FLA.

Mr. ROSENFIELD. Well, first of all, I am very grateful for being taken out of turn.

Mr. GIBBONS. Well, we apologize for all the people that were supposed to be ahead of you. If you will just sit down, we will put your entire statement in the record and you may proceed as you wish

[The prepared statement follows:]

STATEMENT OF GEORGE G. ROSENFIELD

My name is George G. Rosenfield, president and chief executive officer of Tasco Sales Incorported, of Miami, Florida. I appear today as probably the largest importer of prism binoculars from the Far East, that is Japan, Korea, and Hong Kong, to urge that you report favorably H.R. 5875.

This is the bill introduced by Congressman Sam Gibbons of Florida and Norman Mineta of California for the purpose of amending the Tariff Schedules of the United States to repeal the duty on certain field glasses and prism binoculars.

A companion measure, Section 18 of H.R. 3122, has been favorably reported by the Senate Finance Committee and currently awaits the opportunity to be considered and voted on. Incidentally, on two previous occasions, the Senate has passed a bill for this purpose but the House failed to act because it was too late in the sessions involved.

At any rate, as an American importer, I currently pay an 18.5 percent ad valorem duty on prism binoculars from Japan while I can enter these same binoculars from Korea, Taiwan, and Hong Kong duty free because of their CSP (General System of Preferences) status as countries.

Prior to January 1, 1980, I had to pay the old 20 percent duty rate, which has now been lowered to 18.5 percent due to the operation of the first staging phase of the Multilateral Tariff Negotiations (MTN) that was approved late last year.

With your permission, may I show the Subcommittee three identical prism binoculars, all Tasco Zip binoculars identified as Model 304Z from Japan, Model 2000 from Hong Kong, and Model 3000 from Korea. The Japanese model wholesales at about $31.50 and retails for about $40 to $50. The Hong Kong version wholesales for about $22.50 and retails for about $30 to $35. The Korea sample wholesales for about $22.58 and retails for about $30 to $35, the same as for its Hong Kong counterpart.

Please examine these three prism binoculars carefully. You will see that all three are just about identical, except for the country of origin. The Japanese model, partly because I must pay a substantial 18.5 percent ad valorem duty, retails for five to $15 more.

And who has to pay the difference? The American consumer.

Pass H.R. 5875 and equalize their tariff treatment, so that all prism binoculars may enter duty free.

The samples are examples of the low-end prism binoculars. Naturally, there are many, higher priced instruments available, mostly from Japan. And, because of the ad valorem duty, they have to sell for much more than if there were no tariff at all on these optical instruments.

At the same time, it should be noted that binocular production in Taiwan and Korea, for instance, is dominated and controlled by one or two major operators, while in Japan this is considered a type of cottage or family industry, with perhaps a hundred companies more or less involved in their production. This diversity in manufacturing allows me as an importer a great choice and variety of binoculars as to styles, lenses, etc. The Japanese inform me, though, more and more of their small factories are going bankrupt because they cannot send in their finished binoculars, because of the high tariff, and still manage to sell in the American market. If there is duty-free entry of all binoculars from all countries the American consumer will be the major beneficiary in terms of prices, quality, and styles.

There is no commercial production of binoculars in the United States so no American workers will lose employment if the tariffs are repealed. Nor will any American company suffer as a consequence. The big winner, for a change, will be the consumer, who will then be able to buy prism binoculars from Japan, Korea, Hong Kong, or Taiwan at practically the same price.

Prior to 1976, when the GSP went into effect and Korea, Hong Kong, and Taiwan became its beneficiaries, Japan controlled 89 percent of the United States market (1975). Today, as of calendar year 1979, their share had dropped to 49 percent. On the other hand, Taiwan increased its share (1975) from 1 percent to 14 percent, Hong Kong from 0.8 percent to 12 percent, and Korea from 3 percent to 19 percent.

Japan, the country that did the most to popularize ownership of prism binoculars, reduce prices to bring them within reach of the average consumer and thereby opened up new vistas of beauty and scope, has in effect been penalized for producing what most consider the most efficient and effective, and the best and most popular, binoculars.

The average consumer cannot tell from looking casually at all three of the sample binoculars which are made in Japan, Korea, or Hong Kong. Yet there is a significant price differential.

If the 18.5 duty is repealed, the American consumer will be by far the most significant beneficiary. And no American interest—workers, industry, companies, etc.—will be harmed thereby.

In closing, may I submit for the information of the Subcommittee two documents that have been developed for informational purposes, both from official data of the Department of Commerce. One is a tabulation of prism binoculars from each of the four Far East exporting countries—Japan, Taiwan, Hong Kong, and Korea—in terms of the net quantity, dollar value, calculated duty, ad valorem duty rate, dollar value per unit, percentage of market share, and duty paid per dollar unit for calendar years 1975 to 1979. The statistics do not take into account the appreciation of the yen and the subsequent devaluation of the dollar and vice versa.

The other is a recapitulation of the percentage changes from 1975 to 1979 in terms of "quantity", "value" and "market share", again without reference to the yen and dollar fluctuations.

Thank you for permitting me to appear and testify in favor of the bill H.R. 5875.

U.S. IMPORTS FOR CONSUMPTION

TSUS 708.5200 PRISM BINOCULARS

[Net quantity, value, calculated duty, value per unit, market share]

	1975	1976	1977	1978	1979
Japan:					
Net Quantity (units)	839,153	1,305,859	1,319,876	1,034,079	691,064
Value (dollars)	12,622,356	18,382,909	24,518,301	25,776,467	16,630,806
Calculated duty (dollars)	2,524,470	3,676,574	4,903,662	4,755,293	3,330,181
Ad valorem duty rate (percent)	20.0	20.0	20.0	20.0	20.0
Value per unit (dollars)	15.0	14.0	18.5	22.9	24.0
Market share (percent)	89	77	71	51	49
Duty paid per unit (dollars)	3.0	2.8	3.7	4.5	4.8
China (Taiwan):					
Net quantity (units)	20,132	84,524	147,643	308,265	278,808
Value (dollars)	210,808	976,763	1,853,008	4,265,207	4,554,625
Calculated duty (dollars)	42,161	----	----	----	----
Ad valorem duty rate (percent)	20.0	Free	Free	Free	Free
Value per unit (dollars)	10.4	11.5	12.5	13.8	16.3
Market share (percent)	1	4	5	15	13.8
Duty paid per unit (dollars)	2.0	----	----	----	----
Hong Kong:					
Net quantity (units)	16,308	75,303	154,681	252,513	170,376
Value (dollars)	124,534	901,898	1,697,656	2,773,404	2,393,182
Calculated duty (dollars)	24,908	----	----	----	----
Ad valorem duty rate (percent)	20.0	Free	Free	Free	Free
Value per unit (dollars)	7.6	11.9	10.9	10.9	14.0
Market share (percent)	0.8	3.8	4.9	12	12.1
Duty paid per unit (dollars)	1.5	----	----	----	----
Korea:					
Net quantity (units)	45,460	178,304	322,720	395,929	265,182
Value (dollars)	482,951	2,090,511	4,237,011	5,673,759	3,739,851
Calculated duty (dollars)	96,591	----	----	----	----
Ad valorem duty rate (percent)	20.0	Free	Free	Free	Free
Value per unit (dollars)	10.6	11.7	13.1	14.3	14.1
Market share (percent)	3	8.8	12	19	18.8
Duty paid per unit (dollars)	2.1	----	----	----	----

Note: Fluctuation in the yen and the dollar is not reflected in the above data.

Source: U.S. Department of Commerce.

U.S. IMPORTS FOR CONSUMPTION—TSUS 708.5200 PRISM BINOCULARS

Quantity—percentage difference between 1975 and 1979

Japan	(—)17.7
China (Taiwan)	+1,385
Hong Kong	+1,044
Korea	+583

Value—percentage difference between 1975 and 1979

Japan	[1] +31.9
China (Taiwan)	+2,160
Hong Kong	+1,921
Korea	+774

Market share—percentage difference between 1975 and 1979

Japan	(—)50
Total China (Taiwan), Hong Kong, Korea	+40.7

[1] Figures do not take into account the fluctuations of the yen and the dollar.

Mr. ROSENFIELD. OK. Basically, beyond the statement as submitted, I did bring along a couple of examples of binoculars. One is a standard binocular and the other is a wide-angle binocular; and about all that I have to add to the statement as submitted is that an excellent example of the gain to the United States is illustraed by the fact that Tasco is now supplying Japanese binoculars, that where we won an award to supply binoculars to the U.S. Navy, and if we were to lose more of the binocular makers that are currently still in business, the

competitiveness that exists with the award that we just won could very, very easily be lost.

As an example, we are currently supplying the Navy with binoculars from Japan, where the Government is paying approximately $125 a pair, and had we not submitted our bid, it is very, very possible that the next bidder other than from Japan was Zeiss, whose price quotation was approximately $375 a pair. So we are actually saving the Government $250 between our Japanese price and the German price.

Now, beyond that, there are no makers in Korea or Hong Kong or Taiwan that can really produce binoculars that would give the consumer the variety or the type of quality that certainly the U.S. Government would require.

Insofar as importation and sale of binoculars to give you some idea as to how very, very drastic the change in the market has come into being, in the year 1976 one of the most common binoculars, the 7 × 35, we sold 37,000 pair in 1976. Our figures dropped to 23,000 in 1977, and in 1978 to 9,500 pair; and in 1979 in the same model, only 473 pair. So the 18.5 percent duty disadvantage the Japanese are involved with is really, really putting these Japanese binocular people out of business; and I really believe that the administration's position to take the duty off the Japanese binoculars is certainly well worthwhile, to give us the variety and the merchandise at competitive prices that we all really need.

Mr. GIBBONS. Well, sir, I understand the administration favors your proposal and that there are no competitive manufacturers in the United States for this type of field glasses or binoculars; and I hope that if we do this for the Japanese, they will take the same kind of charitable attitude toward some of our products that come in over there.

We will take occasion to remind them of that from time to time. But I don't know of any objection to your bill, and since I am one of the cosponsors, naturally, I am in favor of it.

But let's hear from some of the tightfisted members of the committee, Mr. Frenzel and Mr. Moore.

Mr. FRENZEL. Mr. Chairman, when the gavel is in your hand, I always like your bills.

Mr. ROSENFIELD. I beg your pardon?

Mr. GIBBONS. He was saying he likes your bill.

Mr. ROSENFIELD. Oh, fine, but I really feel that we Americans should know that the president of the Japanese binocular association, who happens to be a good friend of mine, back in 1976, his was one of the better binoculars. In fact, he was party to their producing seven pairs of binoculars that NASA wanted, and there was no one else who offered to supply them; and he really worked long and hard to satisfy this NASA requirement; but look what happened to this man's business: In 1976 we sold 7,000 pair of his most popular binocular; in 1977 we sold 2,800 pair of this binocular; in 1978 we sold 1,580; and in 1979 just 1,098.

Mr. Miyata was up here and visited with Mr. Strauss' assistant, Mr. Kelly, and at this time he is just about semiretired. I mean, he is actually teaching rather than making binoculars. He still has a binocular plant but very little binocular production.

But when I came out of that meeting with Mr. Miyata after meeting with Mr. Kelly and getting some interest from Mr. Strauss' department at that time, he said, "Gee, George,"—and this is through an interpreter—he said, "I can easily see that we Japanese have not been as cooperative as we should have been, and when I get back I am going to push some of the things, so that more importations into Japan will come into being." A very, very sincere man, and I sincerely believe that many, many segments of importations from the States to Japan have increased, as there is a willingness there. But nobody in Japan that is in the binocular industry can ever really understand why we haven't dropped the binocular duty. In fact, in my estimation we are actually pushing good, competent workers that are in the binocular business, which is noncompetitive, and we are shoving these talented people into other fields that are competitive. It may not be but 2,000 or 3,000 people, but we are losing people who can be producing noncompetitive products and they are going off into other fields.

Mr. FRENZEL. What is the matter, did GSP hit Japan?

Mr. ROSENFIELD. It really killed them. These people from Korea, Hong Kong, and Taiwan are dedicated to bring into minimal assortment at competitive prices. Note there is only one maker in Korea and the same principal owns the plants in Hong Kong and Taiwan, but that duty difference has really killed these Japanese; they have really gone out of business.

Mr. GIBBONS. Mr. Moore, do you have questions?

Mr. MOORE. No questions, Mr. Chairman.

Mr. GIBBONS. Thank you.

Mr. ROSENFIELD. Thank you very much for letting me catch my airplane this afternoon.

Mr. GIBBONS. Yes, sir.

Well, we next take up Mr. Shumway's bill, H.R. 5242. Come forward, Mr. Shumway. We are glad you are here. We are sorry to keep you waiting so long.

We will put your entire statement in the record.

STATEMENT OF HON. NORMAN D. SHUMWAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SHUMWAY. Thank you, Mr. Chairman. I won't take the time of the subcommittee to read my entire statement, but just to point to some of its highlights and I will appreciate it being made a part of the record.

I would also like to submit at this time a letter addressed to me from the International Brotherhood of Teamsters, signed by Frank Fitsimmons, dated March 14, 1980, and have that made a part of the record as well.

Mr. GIBBONS. It will be so entered.

Mr. SHUMWAY. Mr. Chairman, I appreciate this opportunity to appear before you and testify on behalf of my bill, H.R. 5242. This legislation would amend the tariff schedules of the United States to establish a modest import duty on unrefined Montan wax.

I am a proponent of efforts to encourage the free flow of goods between the world's marketplaces and believe that international trade barriers should be reduced.

In the case of Montan wax, however, I believe we have a unique set of circumstances which deserve special attention.

Realizing that maybe members of the subcommittee don't know what Montan wax is, as I didn't, I have some samples that I would like to share with you, and you might take a look at them.

Mr. GIBBONS. Fine, we would like to see them. I asked earlier what it was.

Mr. SHUMWAY. I did, too.

Mr. GIBBONS. It looks like the stuff I eat for breakfast, or this brown stuff does, anyway.

Mr. SHUMWAY. Montan wax is produced only by one company in the United States and it is important to note that the only other suppliers in the entire world are in Communist countries, notably operating in East Germany. The domestic producer of this product is located in Ione, Calif., which is a part of my congressional district. The name of that producer is American Lignite Products Co., and we have referred to it in the statement here as Alpco.

Alpco mines a soft brown coal called lignite and that lignite in the United States is the only known reserve of the wax-bearing substance which is made into Montan wax. When it is processed, after being mined, it is put into a flaked form and then sold to the manufacturers of carbon paper, the kind of carbon paper that has only a one-time use. It appears in everyday business in forms such as credit card sets, computer printouts, ticket stubs, airline tickets and simple business forms.

There has been a history of some price disparity regarding the Montan wax which has been marketed by Alpco and that which has been supplied by the East German manufacturers.

On page 2 of my statement I have a chart which indicates the relative prices of this product, beginning in 1973 and continuing right up until March of this year.

The members of the subcommittee will notice that the price in the case of Alpco has risen considerably, while the price offered by the East Germans has remained relatively constant, with only a small rise in the extreme right-hand side of that schedule.

You will notice that the employment of Alpco has corresponded in a downward rate as the price has gone upward.

The total market during the years depicted in this chart has grown between 33 and 45 percent; therefore, the amount of product which is sold in the world by Alpco should conceivably increase, but, on the other hand, it has not increased.

I would like to point out to members of the subcommittee at this point that the reason for this does not lie in any inefficiency or in any lack of skillful production on the part of Alpco, but the subcommittee members should realize that the manufacturers of Montan wax depends considerably on the use of natural gas and solvents. We all know that the price of those materials has risen astronomically, not only in the last few months but also in recent years.

On the other hand, the East Germans are capable of manufacturing Montan wax as a by-product of a coal which is mined and used commercially in East Germany and, therefore, the price of production has not suffered the same kind of increases we have seen in this country.

Alpco's price for this product is currently 61.5 cents per pound, while the price offered by East German producers is 46 cents per

pound. Moreover, the East German wax is FOB New York, while Alpco must add 9 cents per pound to transport its product to the east coast, resulting in a total cost of 70 cents per pound.

In my statement I have set forth some facts which I think rather well describe the history of a course pursued by the East Germans which has been aimed at eliminating the only competition which it has had in this country. This history begins in the early 1950's and brings forth the facts that existed then and that have developed since that time.

Momentarily during the 1950's there was an easing of the different price. However, in 1967 there was again an effort made to undercut the price of the materials sold by Alpco. When that was resolved, the matter remained in a very static state until 1977, at which time East Germany again sought to dominate the market by undercutting the price at which this material could be sold domestically.

As the result, I am submitting to the subcommittee at list showing the sales loss to the major users of this product in America, the sales which have been lost to Alpco which formerly were enjoyed by that company.

The bills paid by American Lignite for natural gas and power have increased 65 percent in just the last 5 months alone, and the cost of solvent, as we all know, has skyrocketed some 100 percent within that same period of time. That fact, coupled with the predatory pricing policies which have been pursued by the East Germans, have simply put the American producer in such a condition that it can no longer compete effectively for the product in this country.

We are suggesting an 11-cents-per-pound import duty, a figure derived from the difference in price which existed in July of last year; and I have set forth in my statement what effect that might have on the raw material costs for those who are in the business of producing this kind of carbon paper.

Essentially, it would increase their costs by only 3.8 percent, which is really not a very significant amount and yet would keep alive what I think to be a very important American producer and allow him to compete within this country.

Mr. Chairman, I don't believe that the sole producer of American Montan wax should be forced to terminate its operations because of the underpricing which has been the practice of the East German producers. The modest duty of 11 cents per pound on imported, unrefined Montan wax will not result in an unfair pricing advantage for Alpco but, rather, it will provide the relief necessary for Alpco's continued production and maintenance as an economic entity of importance to our nation.

Your favorable consideration, therefore, of H.R. 5242 would be the first step on Alpco's journey to recovery and I sincerely urge your support.

Thanks again for the opportunity to be here today.

[The prepared statement and attachment follow:]

STATEMENT OF HON. NORMAN D. SHUMWAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and members of the Trade Subcommittee, I appreciate the opportunity to appear before you today to testify on behalf of my bill H.R. 5242.

This legislation would amend the Tariff Schedules of the United States to establish a modest import duty on unrefined Montan wax. I am a proponent of efforts to encourage the free flow of goods between the world's market places, and believe that international trade barriers should be reduced. In the case of Montan wax, however, a unique circumstances exists which deserves special attention.

Montan wax is produced by a single company in the United States and it is important to note that there are no other wax suppliers except those operating in Communist countries. The domestic producer is the American Lignite Products Company (ALPCO) in Ione, California, which is located in my Congressional district.

American Lignite mines a soft brown coal called lignite from its mine near Ione, which is the only known reserve of wax-bearing lignite in the free world. The mined lignite is petrochemically processed to remove the Montan wax. After further refining, the extracted wax is sold in flaked form to one-time carbon paper manufacturers. These carbon paper manufacturers use Montan as a flow agent in making the inks used in carbon paper. The coated papers are sold to manufacturers of business forms, credit card sets, computer print-out forms, ticket stubs, and similar business forms.

According to the President of ALPCO, Mr. Jack Hounslow:

"Competition for Montan wax comes exclusively from East Germany. It has been very difficult to compete with this Communist controlled country since their chief business is using lignite as a fuel source with wax being a by-product."

From 1973 until 1977, the price for East German wax and the American wax was relatively equal. ALPCO's share of the market remained constant at about 60 to 65 percent. However, as the following chart illustrates, the past three years reveals the price disparity between ALPCO and the East German manufacturer.

PRICE PER POUND OF MONTAN WAX

Year	ALPCO price[1]	East German price[2]	ALPCO employment
1973	$0.254	$0.25	28
1974[3]	.28	.345	28
1975	.36	.39	26
1976	.385	.39	27
1977	.43	.39	24
Jan. 1, 1978	.46	.39	24
July 1, 1978	.475	.39	24
Jan. 1, 1979	.495	.41	22
July 1, 1979	.52	.41	22
Mar. 3, 1980	.516	.46	20

[1] F.o.b. Amador County, Calif. (add $0.07 per pound to New York—recently raised to $0.09 per pound).
[2] F.o.b. New York warehouse.
[3] Price control in effect in United States.

Although domestic shipments for these years have been relatively constant, it is important to note that the total market has grown betwen 33 and 45 percent. Unfortunately, ALPCO's share of the domestic market has decreased approximately 50 percent.

The American Lignite Company's current price is $0.615 per pound while East Germany's is $0.46 per pound. Moreover, the East German wax is F.O.B. New York while ALPCO must add $0.09 per pound to transport its product to the East Coast resulting in a total cost of $0.70 per pound.

East German producers have been able to consistently keep their price low while the price for ALPCO wax has increased 43 percent in the last three years. I do not believe the East Germans have been immune from inflationary pressures, but rather have embarked on a course aimed at eliminating the only free world competitor. This is not their first attempt but a continuation of predatory pricing techniques which date back to the mid 1950's.

ALPCO's president explains, "Back in 1954 and 1955, when American Lignite was first trying to establish itself as a supplier of Montan wax, the East Germans made a valiant and nearly successful attempt to eliminate the American competition."

On October 10, 1955, then Secretary of Commerce Sinclair Weeks wrote to the Chairman of the Committee on Ways and Means: "On the basis of past experience we have observed that the Soviet bloc frequently sets export prices at any

level required to market a commodity, regardless of production cost." Further, Secretary Weeks observed, "the price of imported Montan wax has been steadily declining since 1946 when the U.S. producer started operations." The information in the table below is extracted from the Secretary's letter. It is extremely important to note the price charged by the East Germans in 1946 is more than they are charging in 1980.

Year:	*Per pound German selling price in the Unted States*[1]
1946	$0.50–0.56
1947	0.45
1948	0.33
1949	0.19
1950	0.16
1951	0.13–0.16
1952	0.13–0.16
1953	0.12–0.135
1954, quote as low as 9 and 10 cents	

[1] Information supplied by Sinclair Weeks, Secretary of Commerce, to the Committee on Ways and Means, Oct. 10, 1955.

At a hearing before the U.S. Tariff Commission, under Section 201(A) of the Antidumping Act of 1921, the East Germans rather abruptly and voluntarily, through their shipping agent, agreed not to export any more wax to the United States at a price less than fair market value.

During the next ten years the market price of Montan wax stayed relatively stable with little difference in price between the domestic and East German wax. However, in 1967, the East Germans again attempted to undercut ALPCO prices by offering their Montan wax at $0.06 under U.S. prices. In addition, they offered freight allowances to major customers. It was not until ALPCO officials petitioned Congress for relief did the East Germans bring their prices in line with those of the American company. During the ten year period which followed, from 1967 to 1977, East German prices remained comparable to those in the U.S.

For the third time, East Germany is again threatening the American Montan wax business by underpricing. From 1977 to the present ALPCO has been beset by worsening economic conditions which have been augmented by East Germany's low prices. The chart below lists the customers and quantities purchased by them from American Lignite before the latest price differentials developed.

Sales to East Germans

Customer name and location:	*Sales lost in pounds*
Moore Business Forms:	
Nocogdoches, Tex	300,000
Honesdale, Pa	250,000
Visalia, Calif	200,000
Standard Register Co., York, Pa	320,000
Arnold Graphic, Hagerstown, Pa	150,000
Southwest Carbon, Parsons, Kans	80,000
Stenno Carbon, Portland, Oreg	80,000
Ideal Carbon, Brooklyn, N.Y	50,000
Duplex Products, Sycamore, Ill	30,000
Miscellaneous small users	100,000
Total	1,560,000

To continue operations, ALPCO has been forced to reduce their hourly payroll by seven employees—a reduction of one-third of its labor force.

In the last five months, American Lignite's natural gas and power bills have increased 65 percent while the cost of solvents have skyrocketed 100 percent. Both natural gas and solvents are used in large quantities to produce Montan wax and therefore must be reflected in ALPCO's selling price.

The following analysis is offered to confirm the predatory pricing policies of East Germany during recent years. As you know, no official exchange rates exist between East and West Deutchmarks. Since relative parity is maintained, a

conversion of U.S. selling prices to West German Deutchmarks illustrate the undercutting technique utilized by the East Germans.

Year	Deutsche marks per U.S. dollar [1]	U.S. dollars per deutsche mark [1]	Base year 1975 (percent)	U.S. selling price	Selling price in 1975 U.S. dollars
1975	2.62	0.3814	100	$0.39	$0.39
1976	2.36	.4233	90	.39	.35
1977	2.10	.4751	80	.39	.31
1978	1.86	.5375	70	.41	.29
1979	1.78	.5618	67	.45	.30

[1] Compiled by the International Division of the Bank of America.

In real terms, the actual realized price to the East Germans has declined from $0.39 per pound to $0.30 per pound. Although the East German selling price has increased $0.06 per pound in five years, it translates to only three percent annually. This does not compare with increases in product prices for other German goods given the decline in the value of the American dollar. Thus, given the decline in the actual realized price and only a moderate increase in the selling price, it is clear that the only motive of East Germany is to drive its only competitor out of business.

To evaluate the impact of the $0.11 per pound import duty on the customers of Montan wax, I have provided the following chart.

TYPICAL RAW MATERIAL COSTS OF 1-TIME CARBON PAPER INK

Ingredient	Percent used	Cost per pound	Cost in formula
Before the $0.11 per pound duty:			
Montan wax	8	$0.46	$0.037
Oil	32	.22	.070
Paraffin wax	40	.23	.092
Carbon black	20	.15	.030
Total cost per pound			.229
After the $0.11 per pound duty:			
Montan wax	8	.57	.046
Oil	32	.22	.070
Paraffin wax	40	.23	.092
Carbon black	20	.15	.030
Total cost per pound			.238

The total cost per pound of one-time carbon paper ink would increase only one cent. Further, this duty would inflate raw material costs by only 3.8 percent—hardly a significant amount in these days when the annual rate of inflation hovers at 20 percent.

Mr. Chairman, I do not believe the sole American producer of Montan wax should be forced to terminate operations as a result of East Germany's underpricing. The modest duty of $0.11 per pound on imported unrefined Montan wax will not result in an unfair pricing advantage for ALPCO. Rather, it will provide the relief necessary for ALPCO's continued production and maintenance as an economic entity of importance to our nation. Your favorable consideration of H.R. 5242 would be the first step on ALPCO's journey to recovery and I encourage your support.

Thank you again for the opportunity to testify and I would be pleased to answer any questions you might have.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,
Washington, D.C., March 14, 1980.

Congressman NORMAN D. SHUMWAY,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN SHUMWAY: The International Brotherhood of Teamsters is deeply concerned about the problems created by imports sold in the United

States at below market costs. These imports cause market disruption and result in the loss of American jobs.

Just such a case is before the House Ways and Means Subcommittee on Trade. Montan Wax is being imported from East Germany at a cost well below the cost that an American company can produce the wax. In fact, it is so far below costs that the American company is not able to compete.

American Lignite Products is the only producer of this wax in the United States. If it were to go under, we would be forced to rely on East Germany imports for our entire supply of this product. It would also result in the loss of jobs for Teamster members.

On behalf of our members employed by this company and all American workers who are threatened by under-priced imports, we urged Congress to take steps to remedy this situation.

We urge your support for H.R. 5242, as it refers to this case, and request that your committee review the impact of such imports from non-market, state supported, industries.

Sincerely,

FRANK E. FITZSIMMONS,
General President.

Mr. GIBBONS. We appreciate your bringing this matter to our attention. Frankly, you have educated us. I didn't know such a product existed. I appreciate the light you have thrown on such a situation.

Mr. Moore?

Mr. MOORE. Thank you, Mr. Chairman.

We have a problem here we have run into before. Do you have any information at all as to what is the cost of production of Montan wax in East Germany? I see your 1973 through March 3 of 1980 comparisons, and it shows the upward trend of Alpco's price and a relatively stable trend in the East German price.

Now, do you have any information on their cost of production? And here is why we run into the problem of how you determine cost of production in a state-owned economy, but do you have any information on that?

Mr. SHUMWAY. That is an excellent question, but I think it is particularly critical in this regard with reference to this bill, because of the fact that the only other source of production in the world outside of this one company in America lies behind the Iron Curtain. It is therefore impossible for us to get accurate production figures. We can simply interpret from the production history between the companies supplying this product to the users of the world that there has been a course which has been consistently followed by the East Germans of undercutting the price domestically.

But I can't provide the kind of statistics that the gentleman has requested. I wish I could, simply because of the fact that we are——

Mr. MOORE. Don't feel bad; Treasury can't do it either, when it comes to a state-run economy.

Let me ask you, do you have information on what the East Germans are selling this to anybody else for?

Mr. SHUMWAY. Yes, sir; we have that information, and that indicates very closely that they are selling in other countries of the world at a price well beyond what they are charging to American customers. That, again, indicates to us that the attempt is deliberate to undermine the American market.

Mr. MOORE. Mr. Chairman, I would like to ask the record be left open and could you furnish us that information, of what countries and what price?

Mr. SHUMWAY. Thank you. I will do that.

[The information follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 31, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At the miscellaneous tariff bill hearing on Monday 17 March 1980, two questions were raised by Congressman W. Henson Moore during my oral statement on H.R. 5342, a bill to impose a $0.11 per pound tariff on imported montan wax. My purpose in writing today is to provide supplemental information for the subcommittee consideration.

I have attached a copy of a letter from Mr. Jack Hounslow, President of American Lignite Products Company of Ione, California. As you know, Mr. Hounslow's company is the only free-world producer of montan wax and is suffering from predatory pricing techniques by East Germany, the world's only other producer of montan. I respectively request his letter be made part of the permanent record of the 17 March 1980 hearing.

Congressman Moore asked about the price charged by the East Germans in other countries, and on page 5 of Mr. Hounslow's letter, there are facts provided which support the argument that East Germany is actually charging more, in U.S. dollars, for its montan wax abroad. The East Germans sell their wax per pound at $0.61 in Canada and at $0.71 in Japan—well over the $0.47 charged in the United States. This $0.14–$0.24 per pound differential exemplifies the East German goal of undercutting American Lignite Products Company.

Further, Mr. Moore asked what the recent inflation rate is in East Germany. Although exact figures are unavailable, it is clear that because of East German economic policies, inflation is greatly suppressed due to its controlled economy which subsidizes product prices.

I appreciate your consideration and urge your support for H.R. 5242.

With best personal regards,

Sincerely,

NORMAN D. SHUMWAY,
Member of Congress.

Enclosure: Letter has been retained in Subcommittee file; however, page 5 follows in response to Congressman Moore's first question.

V. COMPETITIVE PRICING IN INTERNATIONAL MARKETS

While the East Germans sell their product in the U.S. for approximately $.47 per pound their pricing in other countries is quite different. In Canada, for example, their F.O.B. prices in Montreal or Toronto are the equivalent of $.61 U.S. or the same as our U.S. price. In Japan their price is 390 Yen per kilo. This translates to $.71 U.S. using the current currency exchange of 247 Yen per U.S. dollar.

I believe the question should be asked, why is it that only in the U.S. is the price maintained well below fair market value. I believe you told me that when Mr. Baldini was asked at what price he sells German montan in Canada, he responded "approximately the same as the U.S."

I doubt if the Subcommittee would accept this response knowing the facts. Even if the $.11 tariff were added to their U.S. price ($.47) their price would still be $.03 below the American producer's. For your information both the Canadian and Japanese price quotes were obtained from independent wax importers in those countries and are consistent with the prices revealed to us by our customers.

Mr. MOORE. The second thing, again, is that we have trouble computing what inflation is in a state-run economy. By fiat, they say, "We don't have inflation," and that is it. They just order it out of existence or something. But can you look at the East German economy in terms of inflation so we can take their prices and compute whether their price is below inflation, which would be corroborative evidence that they are, in fact, trying to drive your constituent out of business?

Mr. SHUMWAY. I am not sure, in response to the gentleman's question, that we do have accurate figures to describe the right rate of inflation in East Germany, but we do have figures that pertain to the exchange rate between the U.S. dollar and the German deutsche mark; and I have that set forth in my statement in some detail, at least for the years 1975 through 1979, indicating that based upon the corresponding values between those units of currency, the selling price has gone down in the United States for the East German Montan wax.

Mr. MOORE. OK. Thank you very much.

No questions.

Mr. GIBBONS. Thank you.

Mr. SHUMWAY. Thank you, and I will submit that information for the record.

Mr. GIBBONS. Mr. Baldini.

STATEMENT OF ROBERT A. BALDINI, EXECUTIVE VICE PRESIDENT, STROHMEYER & ARPE CO., INC., MILLBURN, N.J.; ACCOMPANIED BY W. N. HARRELL SMITH, COUNSEL; AND ELLIOT TREIBER, VICE PRESIDENT

Mr. BALDINI. My name is Robert Baldini and I am executive vice president of Strohmeyer & Arpe Co., Inc., of Millburn, N.J. The gentleman on my left is Mr. Harrell Smith, our counsel of the law firm of Chapman, Duff & Paul, and the gentleman on my right is Elliot Treiber, vice president of my company.

I am submitting my entire statement for the record.

Mr. GIBBONS. We will put that entire statement in the record. Go ahead.

[The prepared statement follows:]

STATEMENT OF ROBERT A. BALDINI, EXECUTIVE VICE PRESIDENT, STROHMEYER & ARPE CO., INC.

My name is Robert A. Baldini and I am Executive Vice President of Strohmeyer & Arpe Company, Inc., the only importer of crude montan wax into the United States. I am a graduate of Princeton University in International Relations. Since the end of World War II, I have been actively engaged in the sale and importation of natural waxes, first with W. R. Grace and Company, and since 1972, with Strohmeyer & Arpe Company, Inc., of Millburn, New Jersey. I have been engaged in U.S. sales of crude montan wax, in particular, since 1965.

Strohmeyer & Arpe Company, Inc. has imported crude montan wax from Germany, now the German Democratic Republic (GDR), since 1907 except during the First and Second World Wars. The company is entirely independent of its supplier. Strohmeyer & Arpe determines what the prices will be in the U.S. market for the various grades of crude montan wax it sells. The company negotiates every October with AHB Chemie, a GDR foreign trade organization, to agree on a contract with a year's term. These are arms length, often difficult, negotiations covering quantity and price, in which the importer tries to negotiate as low a price as is possible and the foreign trade organization tries to get as high a price for the product as possible. It is an ordinary commercial negotiation, since the negotiators for AHB Chemie are responsible for getting the maximum return for their wax. The medium of exchange is U.S. dollars.

Position on H.R. 5242.—Strohmeyer & Arpe opposes H.R. 5242. If passed it will cause the prices of crude montan wax to rise to 64–65¢ per pound f.o.b. New York. At that price, our customers have told us they will shift to alternate waxes, initially carnauba wax from Brazil, whose price is falling, or petrochemical waxes widely available in the United States. Furthermore, such a price increase would tend to sharply accelerate the trend within the business forms industry

towards use of carbonless paper at the expense of the smaller companies—our customers—that manufacture only one-time carbon paper.

The proposed duty increase translates into a 38-percent price increase to our business forms customers. The price increase mandated by H.R. 5242 would effect two-thirds of the American market, the Strohmeyer & Arpe market share. Many of these customers are small, labor intensive business form manufacturers and the increased cost to them would have an adverse effect on their economic viability. The inflationary effect alone should cause this bill not to become law.

Crude montan wax and its applications.—I have attached two documents as Appendices A and B: Foedisch, "Chemistry and Technology of Montan Wax," October 1972 (a scholarly article reprinted from The American Ink Maker) and "Romonta Montan Wax," a detailed brochure published by VEB Braunkohlenkombinat, the manufacturer of Romonta brand crude montan wax, which is the wax Strohmeyer & Arpe imports. These two documents have detailed descriptions of the extraction from lignite and applications of crude montan wax.

In a nutshell, montan wax is fossilized vegetable wax and is found in lignite, or brown coal deposits. A substitute for montan wax is carnauba vegetable wax, found in palm trees in Brazil and similar chemically to the tropical and temperate zone forests fossilized millions of years ago into lignite. Wax-bearing lignite is treated with petrochemical solvents and superheated steam to separate the montan wax. It is generally agreed in the industry that to produce economically a commerically useable montan wax, it is necessary to begin with a coal with the highest possible wax content and the lowest possible resin content; the extracted wax yield must be not less than 10 percent of the lignite processed (after removal of water). See, Foedisch, p. 1, Appendix A and authorities cited therein.

Crude montan wax is used in the United States almost exclusively (95 percent) for manufacture of one-time carbon paper. One of the principal constraints on marketing crude montan wax is that there are no new applications for its use to supplement the carbon paper industry demand for 7–8 million pounds per year. The Department of Transportation has examined its use in cement to retard deterioration of bridge decks and, for a period of time beginning in 1977, it was thought that this application would create a tremendous new demand. I have concluded that montan wax will probably not ever be used in bridge deck construction. W. R. Grace has produced a superior product at a competitive cost that does not have some of the technical drawbacks that crude montan wax has in this application. Thus, continued sales of crude montan wax in the United States depends upon a price strategy that recognizes limited application for the commodity and the ready availability of substitute commodities, some of whose prices, as I have said, are steadily falling.

Tariff classification and rate.—Crude and refined montan wax are combined in TSUSA 494.2000 and there is no column one or two duty. Duty free treatment was bound for GATT purposes in 1951.

Comparison of the two producing facilities.—VEB braunkohlenkombinat accounts for about 98 percent of world-wide production of montan wax. The balance comes from American Lignite Products Company (ALPCO) of Ione, California. There may be some production of montan wax in the Peoples Republic of China, but output never reaches world markets because of its high resin and asphalt content.

The size and quality of the Braunkohlenkombinat reserves, near Leipzig, are unequaled. At the present rate of production the mine currently being worked is to be exhausted in the year 2030 and there are two mines of larger size untouched. The montan wax bearing lignite is easily visible in continuous seams and that lignite always contains 12–17 percent wax. The mine is enormous, about one mile wide and 5 miles long, and half a mile deep. The lignite is removed by five continuous bucket loaders and taken by a continuous train of railroad cars operating on the mine floor to the plant at the edge of the mine.

The montan wax separation plant is designed to enjoy the same economies of scale found in the mine. Twenty-one large extraction machines, 20 of which are in use around the clock, 365 days a year, each produce ten metric tons of crude montan wax a day.

The mine operation as a whole produces 83 percent of the GDR's energy needs. Lignite in briquette form is shipped throughout the GDR. Spent lignite from which montan wax has been extracted is consumed in electric generation for the mine itself, for the city of Leipzig and several towns. The 120 million pounds of crude montan wax produced annually are shipped to 50 or more countries worldwide and sold through independent dealers, for the most part. Lignite extracted locally is used as the process fuel in the manufacture of montan wax.

Thus, none of the lignite is wasted and, because the operation is vertically integrated and because of the scale and modern techniques of production, it is extremely efficient. The crude montan wax is extracted through use of hot solvents in a percolating process. Solvents are petrochemicals and expensive; these are efficiently recycled in the operation and there is virtually no loss.

The ALPCO plant in California stands in grim contrast to Braunkohlenkombinat in size and efficiency. The reserves to which ALPCO has access (it does not own the lignite) are not found in continuous seams but in large potholes. The richer lignite was mined years ago [1] and what is left has a declining wax content of no more, on average, than 5.5 percent. Montan wax is the only significant product that is made from the California lignite. The spent lignite is piled in large mounds; because of its ash content it cannot be efficiently used as a fuel. ALPCO relies on imported Canadian natural gas as a process fuel. Additional high production costs are incurred, because the lignite must be transported by truck to the plant from small pockets of lignite in a large area. The factory uses antiquated equipment originally designed for vegetable oil processing and the equipment is not comparable to the modern machines at Braunkohlenkombinat. I have been told that the ALPCO processing system results in an inordinate loss of expensive solvents into the environment.

Running at capacity, as it does, the factory can produce at most two to two-and-one-half million pounds of crude montan wax per year. As the wax content of the processed lignite declines, the maximum output of the factory must decline as well. I have been told by some of our mutual customers that they have been having difficulty receiving on-time shipments from ALPCO.

ALPCO has yet another cost impediment. Eighty percent of the market for crude montan wax is in the East and Midwest. Therefore, ALPCO's customers must pay sizeable shipping costs—perhaps 8 cents per pound for the largest loads.

Braunkohlenkombinat and ALPCO simply cannot be compared in terms of cost of production, because of the poor quality reserves remaining to ALPCO and lack of economies of scale. Congressman Shumway, when he introduced H.R. 5242, implied that ALPCO was at a disadvantage because it was competing with an enterprise in a non-market economy. Were Braunkohlenkombinat located in any country of comparable development to the GDR that had a market economy, it would maintain a decisive cost advantage over ALPCO because of economies of scale, superior reserves, and more modern and efficient equipment.

Pricing strategies.—The two crude montan wax sellers in the United States, Strohmeyer & Arpe and ALPCO, have opposite pricing strategies. It is in my company's interest to keep customers using montan wax rather than carnauba wax from Brazil and petrochemical wax, or carbonless forms. The California company is facing the end of production. Its owners' strategy is to get the maximum return in the last years or months of operation.

The great risk, however, and the reason we are testifying today, is that the ALPCO strategy could ruin the market for crude montan wax in the United States, if protected by the duty in H.R. 5242.

Let us look, for a moment, at comparative prices charged over the last few years.

COMPARISON OF ALPCO AND STROHMEYER & ARPE PRICES

ALPCO (f.o.b. California)		Strohmeyer & Arpe (f.o.b. New York)	
Date	Per pound	Date	Per pound
1974:		1974:	
Mar. 15	$0.2975	Jan. 1	.28
May 13	.31	Jan. 4	.345
Dec. 1	.36	Dec. 1	.345
1975: Dec. 1	.385	1975: Jan. 1	.39
1976: Aug. 1	.40	1976: Aug 1	.39
1977: July 1	.43	1977: July 1	.39
1978: Jan. 1	.46	1978: Jan. 1	.41
1979:		1979: July 1	.43
July 1	.475		
Dec. 1	.58—.595		
Current	.61—.625	Current	[1] .465.—505

[1] New grade.

Source: Published price lists.

[1] Selvig, Ode, Parks, O'Donnell, "American Lignites: Geological Occurrence Petrographic Composition, and Extractable Waxes," Bureau of Mines Bulletin 482 (1950), 44.

It was not until the latter part of 1977 after the ALPCO plant had been sold by the prior owners to three of its employees that the rapid price increase began. Constant prices through 1975–1977 by Strohmeyer & Arpe are related to overbuying of wax in 1974 and having to work off inventories during a weak demand period. In the ordinary course, Strohmeyer cannot sell its wax on a par with ALPCO wax because of quality differences that affect certain carbon manufacturing processes.

On March 1, 1980, ALPCO apparently raised its prices to 62.5¢ f.o.b. Ione, California and this has resulted in a sharp increase in customer calls to me. While some ALPCO customers are beginning to substitute Strohmeyer & Arpe crude montan wax for ALPCO wax, some of them advised us that they are now converting to carnauba or petrochemical wax.

As you can see from the next table, the cost of carnauba wax is declining and at about 60¢ per pound for crude montan wax, carnauba wax becomes competitive. One would substitute about ⅔ pound of carnauba for one pound of crude montan wax.

Carnauba wax prices (f.o.b .New York)

	Pounds
1974:	
January 1	2.25
December 1	1.25
1975:	
January 1	1.25
December 1	1.00
1976:	
January 1	1.00
December 1	.82
1977:	
January 1	.82
December 1	.84
1978:	
January 1	.84
December 1	.82
1979:	
January 1	.82
December 1	.82
1980:	
January 1	.78

Source: Company records.

Thus, the fundamental difference between Strohmeyer & Arpe's prices and ALPCO's prices is that Strohmeyer & Arpe is pricing to induce the maximum use over the long-term of montan wax whereas ALPCO is pricing to maximize return over the very short-term of necessity, because of their poor reserves, financial distress, and inefficient operation.

Other trade considerations.—In their statements on the House floor both Congressman McFall in 1978 and Congressman Shumway in 1979 emphasized that there must be something unfair about competition from a non-market economy that resulted in lower prices for imports. I do not think a case could be made out on those grounds.

First of all, it is my company alone that determines the price for United States sales of imported crude montan wax.

Second, the level of imports and sales has not in recent years reached the level that it was in 1974–1975. The next table shows our sales 1973–79. We are importing at a relatively high rate now because of a possible longshoremans' strike beginning September 30, 1980. We do not believe that total imports or sales in 1980 will be materially different than in 1979.

STROHMEYER & ARPE SALES, 1973-79

[In pounds]

	United States	Canada	Total North America
1973	4,690,900	368,000	5,058,900
1974	7,157,490	435,500	7,592,990
1975	3,464,100	366,500	3,830,600
1976	3,751,460	475,000	4,226,460
1977	3,757,689	396,500	4,154,189
1978	4,314,145	396,000	4,710,145
1979	4,314,479	435,500	4,749,979
1980 (January)	358,000	40,000	398,000

Source: Company data.

The next table is company data on imports. It shows that there has not been a rapid increase in imports of the sort that has to be alleged in a case involving market disruption. Indeed it can be argued that there has been a decline in imports.

Strohmeyer & Arpe imports of crude montan wax

	Pounds
1974	6,704,568
1975	4,492,854
1976	4,326,452
1977	3,253,104
1978	3,689,496
1979	4,363,920

Source: Company data (ships arrival basis).

Nor do we think a case can be made out for unfair pricing. We price in order to maximize return consistent with maintaining a long-term market in the United States for crude montan wax. Our strategies are entirely different from those of ALPCO, which is in terminal condition. Our supplier, insofar as we know, is a highly profitable operation; its revenues from the sales of all products from the mine have exceeded its cost for many, many years and much is reinvested in modern capital equipment.

Conclusion.—If H.R. 5242 should pass, ALPCO would have a brief period of profitability as it continues to process, at capacity, lignite with uneconomical and declining wax content. The three employees who bought it might be able to recoup more of their investment, but the market for crude montan wax would be spoiled. Other substitute waxes would be used. Use of non-carbon paper would grow at a faster rate than the present 15 percent annual increase. Customers, such as our 60 customers employing 10,000 people, would begin to leave the industry. Strohmeyer and Arpe might have to drop crude montan wax as a line of imports—our basic business.

These results are avoidable and unnecessary. There never has been a duty on the wax; there have not been excessive imports of the wax; nor is it being unfairly priced. It would be tremendously unfair to the business forms industry in the United States to use this form of assistance to the three owners of ALPCO and their employees, as the California montan wax reserves play out.

VEB Braunkohlenkombinat „Gustav Sobottka“

DDR–4256 Röblingen am See

EXPORTEUR:

AHB CHEMIE–EXPORT–IMPORT

Volkseigener Aussenhandelsbetrieb der
Deutschen Demokratischen Republik
DDR–1055 Berlin, Storkower Strasse 133

"FROM BEESWAX TO MONTAN WAX"

Waxes belong to those substances which over many thousands of years have been highly regarded and whose significance has been steadily growing. From ancient sources both literary and artistic we find that even in the earliest times the important properties were known and used. Especially recognised were the wax characteristics of easy moulding under the influence of heat, it's bonding strength, it's sealing capability, it's compatability to dyeing, it's gloss effect, it's repellence to water and it's combustibility. Even today technicians in the wax industry still know how to appreciate these properties. Added to these, over the several thousand years of the history of the use of waxes, a vast number of other properties have been discovered.

There is no doubt that the "classical" type of wax was the beeswax, though other substances being of a waxy nature, such as mineral wax (ozocerite), asphalt, tree resin, were also used in distant ages. For centuries, the significance of the beeswax was so great that it was exclusively this product derived from the honey-bee that was understood by the term "wax".

A product which came from oversees to Europe was carnauba wax. This type of wax was mentioned for the first time in writing in 1648 but only grew into significance after a considerable period of time. Carnauba wax, an exudate of the fan palm tree Copernicia ceritera MART, very common in Brazil, gained considerably in importance. It's hardness and good lustre rapidly made it a widely used ingredient in dressings, polishes, creams, and pastes, but other users of waxes also appreciated this product highly.

It was in 1897 that the pioneering patent granted to Edgar van Boyen was published under the title "Method for the Preparation of Montan Wax from Bitumious Brown Coal". Thus, 1897 is regarded as the year of birth of industrial montan wax production by the extraction method.

The first montan wax factory was set up in the Roeblingen region as early as eight years later. Thus the foundations of wax production on an industrial scale were laid. This was a daring undertaking since at that time it was not yet possible to evaluate the trends of future demands for montan wax.

Subsequently scientists were intensively concerned with finding out everything about the origin and the composition of these extracts from lignite. While doing this they arrived at the conclusion that montan wax, from the genetic viewpoint, is a fossil vegetable wax. Those substances which today are extracted from the lignite were formed as a protective coating on the leaves of palm trees species existing during the era of the Tertiary system.

Through analytical investigations carried out by classical and up-to-date methods it was possible to prove that the fossil montan wax has a chemical composition similar to vegetable waxes obtained in our time. The chemical and physical properties differ only slightly. There is agreement on the most important characteristics concerning application techniques, montan wax being superior to the vegetable waxes obtained today in a great number of applications.

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MONTAN WAX

The Raw Material – Wax-Bearing Lignite

A prerequisite for the production of montan wax is the availability of a lignite suitable for this purpose. For producing montan wax on an industrial scale it is of essential importance that the proportion of wax contained in the coal will permit an economical and effective production and that the wax extract, by its physical and chemical characteristics and its composition, will meet the application criteria of the most diverse uses. But only a few wax-bearing coal deposits measure up to this set of complex requirements. The composition of the wax and the proportion of wax contained in the lignite depend upon the species of plants from which the coal had its origin. Today a brown coal suitable for the extraction of montan wax can only be found in places where a preponderance of waxy plants was involved in the formation of the coal.
Extensive deposits of such coal are found in the German Democratic Republic south-east and north-east of the Harz Mountains. More than one million tons of montan wax have been produced from this lignite coal in the course of 70 years. But inspite of this, the existing reserves will be sufficient to secure a continous production far beyond the year 2000. There are large deposits of wax-bearing coal, which due to their high salt content and resulting unfavourable combustibility, have not been exploited for the generation of energy. These deposits lie untouched in the earth waiting to be used as the raw material for the production of wax.

The Amsdorf Montan Wax Factory

In the montan wax factory at Amsdorf, now affiliated to the VEB Braunkohlenkombinat "Gustav Sobottka", montan wax has been manufactured since 1922. In the course of its history this factory, on the basis of new findings, has been reconstructed many times and also extended by the construction of new production units. Today this factory is the world's largest and most modern plant, for the extraction of montan wax, as far as production exgineering is concerned.
More than 80% of the world production are produced in this factory and delivered to the wax processing industries of about 50 different countries under the brand name ROMONTA. As there is an increasing demand for montan wax on a worldwide scale, production has been stepped up accordingly. Production output has been more than doubled during the last two decades.

Production of MONTAN WAX

The production of montan wax starts with selective mining of the wax-bearing lignite coal by open-cast mining. Coals both rich and poor in wax, occur in the seam alternately superimposed and juxtaposed. By the use of special coal excavators both types of coal are separately mined and the coal rich in wax is transported to the montan wax factory.

The coal still moist when coming from the mine is then dried and crushed to a grain size of 0.2 to 2 mm. Following this, and extraction proper is carried out, that is, the wax is extracted by means of a hot organic solvent in continuous extraction machines with the countercurrent principle applied. Now the solvent is separated from the wax solution by distillation and is then completely removed by blowing in superheated steam. As may be required, the hot liquid montan wax is either cast into small blocks in continuous machines or sprayed to form a fine granulate in a special unit, or, in liquid form, it is simply filled into heatable tank cars or trucks.

For about one decade a proportion of the natural montan wax has been chemically modified for certain applications. By means of suitable additives and by chemical reactions, through partial saponification, transesterification and cross linking the molecules, types of montan wax have been developed which possess specific performance characteristics. The modified types of montan wax are characterized by their particularly high degree of adaptability to the rapidly developing wax processing technologies and production processes for which the range of montan wax products is used as a manufacturing auxiliary.

Types of MONTAN WAX

The sales programm comprises five different types of montan wax which are available at any time. The characteristic data of these types are listed in the following table. In addition to that, other types for specific applications are manufactured on trial and offered.

	ROMONTA (normal)	ROMONTA 665	ROMONTA 6715	ROMONTA 76	ROMONTA Y
Melting Point °C	84–88	100–110*	86–90	86–90	84–88
Penetration index	max. 1	1–2	max. 1	max. 1	max. 1
Acid Value	28–34	8–14	16–22	9–15	27–33
Saponification Value	85–100	60–75	90–105	80–95	83–98
Residue on ignition (ash) %	max. 0.5	1.5–2.0	max. 0.7	1.5–2.0	max. 0.25
Aceton-asoluble Matter (resin) %	11–15	10–14	7–11	8–12	11–15

* Solidification point

The methods specified in the GDR standard TGL 5881 (April 1974 edition) are the standard methods for determining the characteristic data. When taking the DGF Standard Methods, (Division M, [waxes]), as a basis some of the values determined will slightly deviate.

Montan Wax ROMONTA (normal)

Montan Wax ROMONTA is the designation of the montan wax extracted from the coal without having been subjected to a chemical aftertreatment. The term "normal" is added to the name only in such cases where a special differentiation is required.

Montan wax ROMONTA is an ester wax just like the recent vegetable waxes of our time. Its chemical composition is a mixture (approximately 60%) of esters of long-chain aliphatic acids and long-chain aliphatic alcohols. Apart from these esters are considerable amounts of the respective free wax acids in the montan wax. Free wax alcohols, wax ketones and pure hydrocarbons taken together account for only 4% of the montan wax. Besides these actual wax components the normal montan wax ROMONTA contains also about 13% of resins and 4% of dark asphaltic constituents, which are summarized under the terms montan resin and montan asphalt.

Montan wax ROMONTA is a very hard dark wax of a clearly crystalline structure. On heating, it shows a behaviour characteristic of all types of waxes. It melts at about 86 °C without any prolonged transitional state of softening and becomes relatively highly fluid when reaching a level but a few degrees above the melting point.

Montan wax dissolves well in most of the organic solvents, even with only slight heating applied. Due to the substantial amounts of free wax acids contained in it, this montan wax is saponified and emulsified in a simple way. Other particularly marked properties of this wax are a high gloss effect produced when used for polishing, excellent capability of gliding, electrical insulating quality as well as an outstanding thermal stability.

Delivery

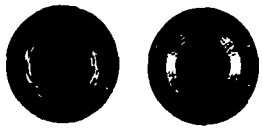
Montan wax ROMONTA (normal) is available either in the form of small blocks (width 5–6 cm, height 2–3 cm), with the brand name ROMONTA embossed, or in the form of fine granules (dia. 0.15 to 1.5 mm). The product is delivered in jute or blended fabric bags; for the product in granulated form, the bags are additionally lined with thin plastic bags. In future, it is intended to deliver the granulated product in multi-ply paper bags.

Montan Wax ROMONTA 665

Montan wax ROMONTA 665 is a partically saponified montan wax which is produced from the normal type of wax by chemical aftertreatment. Its content of free wax acids is but low which is reflected by the low acid value of 10–15.
Montan wax ROMONTA 665 is a hard dark wax of a colloidal structure. As compared to the normal type this wax has an essentially higher combining power for solvents and oils and, therefore, is a valuable low-priced starting material for the production of solvent-containing dressings, polishes and the like. Since it has a relatively high solidification point, it is recommended that this wax be fused in combination with paraffins or other waxes.

Delivery
Montan wax ROMONTA 665 is available in the form of fine granules (dia. 0.15 to 1.5 mm). It is delivered in jute or blended fabric bags with thin plastic liners inserted. In future, it is intended to deliver the product in multi-ply paper bags.

Montan Wax ROMONTA 6715



Montan wax ROMONTA 6715 is produced from the normal type wax by means of a suitable chemical aftertreatment, in the course of which the proportion of resinous matter is reduced and the content of dark asphaltic substances is increased.
Montan wax ROMONTA 6715 is a very hard dark wax of a microcrystalline structure. The well-balanced proportions of the various groups of substances and the chemical activation of the so-called asphaltic constituents make the product particularly suitable for the production of pigmented carbon paper coating compounds. ROMONTA 6715 is characterized by a very good dispersing power towards pigment dyestuffs and a good solvent power for dyestuff bases.

Delivery
Montan wax ROMONTA 6715 is available in the form of fine granules (dia. 0.15 to 1.5 mm). It is delivered in jute or blended fabric bags containing thin plastic liners. Infuture, it is intended to deliver the product in multi-ply paper bags.

Montan Wax ROMONTA 76

Montan wax ROMONTA 76 is manufactured from the normal type by a particularly profound chemical modification in which similar to the type ROMONTA 6715, the resinous matter proportion is lowered and that of dark asphaltic substances is raised.
Montan wax ROMONTA 76 is a very hard dark wax of microcrystalline structure. It is an improved type of the ROMONTA 6715 wax. The elaborate composition of this wax makes it excellently suitable for the manufacture of pigmented carbon paper coating compounds. Its outstanding dispersing power for pigment dyestuffs results in pigmented coating compounds that have an extremely good fluidity.

Delivery
Montan wax ROMONTA 76 is available in the form of fine granules (dia. 0.15 to 1.5 mm). It is delivered in jute or blended fabric bags with inserted thin plastic bags. In future, it is intended to deliver the product in multi-ply paper bags.

Montan Wax ROMONTA Y

Montan wax ROMONTA Y is obtained directly from suitable coal by extraction under specific conditions. The portion of constituents that remain as a residue on combustion is very low in the case of montan wax Y, and when making an analysis this is reflected by the low ignition residue of max. 0.25%.
Montan wax ROMONTA Y is a very hard dark wax of a crystalline structure. On principle, it differs from the normal type only in that it has a guaranteed low residue from burning (ash) and is therefore particularly well suitable for the manufacture of precision cast waxes.

Delivery
Montan wax Y is available in the form of small blocks (width 5–6 cm, height 2–3 cm), with the brand name ROMONTA embossed. The product is delivered in jute or blended fabric bags.

Application of the MONTAN WAXES

When using montan wax it is necessary to differentiate between a direct application of dark montan waxes and the use of wax in the form of light-coloured refined products obtained from montan wax.

First the dark montan wax is to a large extent subjected to refining procedures. Here it is the starting material for the manufacture of high-grade light coloured hard waxes. Both the Waradur and Waraxal waxes manufactured in the GDR in the Voelpke montan wax factory, affiliated to the PCK Schwedt (Petrochemical Combine), and a major part of the Hoechst and BASF waxes known all over the world are produced on the basis of Montan Wax ROMONTA.

There are versatile applications also for montan waxes in an unbleached state. Owing to their outstanding characteristics, these waxes have become an indispensable raw material for the manufacture of carbon paper pigments, as well as dressings and polishes. Industrial uses include also the rubber, cable and wire, plastics, bitumen, and metal industries. Recently, montan waxes have proved to be successful also in such applications as the interior sealing of concrete and the manufacture of wax emulsion for the most versatile industrial purposes.

MONTAN WAXES in the Carbon Paper Industry

The manufacture of carbon paper pigments is one of the main applications of montan wax. Montan wax is an essential component of the pigmented coating compounds.

For the production of one-time carbon paper employed in large quantities in sets of forms and continuous forms used for copying in computers, for about two decades montan wax has been reputed to be that hard wax best suited to the purpose. It is also successfully used in coating compounds or copying inks for multiply used carbon paper apart from carnauba wax. In this connexion, the hard wax has to fulfil a number of important functions which include dispersing of the pigment dyes, dissolving of the dyestuff bases and a well adjusted binding of the oil.

The wax must provide copying inks with the required degree of hardness and a low tackiness at room temperature and a low viscosity with good fluidity properties at high temperatures. The low-priced ROMONTA montan waxes measure up to these requirements in an excellent manner. Particularly appropriate for use in the carbon paper industry are in the first line the types ROMONTA (normal), ROMONTA 6715 and ROMONTA 76. As compared to the normal type, the special types give copying inks characterized by a lower viscosity and a better fluidity, with the other characteristics remaining the same. They permit extremely high coating speeds to be applied. The various ROMONTA types are well compatible with each other and can be mixed in all proportions so that any user may employ those proportions he thinks to be optimum for his specific purpose.

MONTAN WAXES in the Dressings and Polishes Manufacturing Industry

The manufacture of dressings and polishes of all kinds is the perhaps oldest application of montan wax. In this field the waxes are used as significant constituents mainly in leather and floor polishes and pastes, but also in emery and polishing pastes, in stove and French polishes, in ski-waxes, shoe finishing waxes, etc.
Wherever the effect is not spoiled by the dark colour, blending with montan wax will be beneficial for economy and quality. The dark colour is less dominant than may be supposed from the self-colour of the wax, as the montan wax is always used in combination with paraffin and light-coloured waxes.
When producing coloured dressings and polishes, the self-colour of the total compound may be largely suppressed by the dyestuff bases used.
The types ROMONTA (normal) and ROMONTA 665 are particularly suited to applications in the dressings and polishes industry. Being hard waxes, they bring about finished products that are characterized by a high gloss effect on polishing.
The good saponifiability and emulsifiability make the normal type excellently suitable for the preparation of semiliquid and liquid products including the self-gloss emulsions. ROMONTA 665 is especially suitable for the manufacture of pastes and creams due to its high binding power for solvents. The various ROMONTA types are well compatible with each other and can be blended in all proportions, that is, the proportions can be chosen so that the resulting blends will meet the requirements of the specific application to the optimum.

MONTAN WAX in the Bitumen Industry

The bitumen industry represents a relatively recent application of montan wax. In this case montan wax functions as an adhesion promoting agent which has a high thermal stability combined with a good effectiveness. In the construction of roads with bituminous surfacing, very common in all parts of the world today, it is imperative that the bituminous road binder effects a strong fixation of the aggregate to be applied, such that it will be stable to prolonged exposure to water and moisture and capable of withstanding severe mechanical stress. Frequently, this requirement cannot be fulfilled with the aggregate available in the near vicinity of the site. Because of this it has become common practice in most countries to add to the road binding material, (hot asphalt or cut asphalt) an adhesion-improving agent.

Due to its polar nature, montan wax ROMONTA (normal type) has proved to be an excellent adhesion promoter. By adding 0.5 to 1 % of wax to the bitumen the degree of coating as determined by the water stripping test the measurement of the bond strength between binder and aggregate, will be increased to three or four times its original value. Unlike the other amine-based anti-stripping additives, the montan wax ROMONTA is distinguished by its high thermal stability. This adhesion promoting property is fully preserved even in the case of long storage and exposure to temperatures higher than 100 °C. Montan wax ROMONTA also promotes adhesion and increases the resistance to water and moisture also in other bituminous impregnating agents and preservatives for structures and buildings. Since, from the physiological point of view, this product is entirely harmless, there is no restriction whatsoever for its application as an adhesion promoting agent.

MONTAN WAX in the Rubber Industry

Montan wax has been used in the rubber industry for decades. In this application it serves as a multi-functional admixture which at the same time acts as a dispersant and a lubricant.
The montan wax acts as a binder between the nonpolar rubber and the polar fillers, the special merits of this additive in rubber mixes being apparent when calendering. Montan wax added in portions of 1 to 5% to the rubber stock causes a remarkable homogenization of the mixture to be obtained so that it becomes possible to achieve smooth rubber-coatings on fabrics which are free of tension. Calendered rubber products where montan wax has been used an an additive show a relatively low tendency towards bleeding so that in the end an improved storage life can be recorded.

MONTAN WAX for Precision Casting

The process for the manufacture of precision castings by means of wax base fusion-casting patterns has been employed for no longer than about 30 years in casting technology. In order to cast complicated or intricately shaped parts or articles it is necessary to produce wax patterns. Montan wax has proved to be a very valuable base material for this purpose, which in combination with other waxes and wax resins leads to waxes of optimum suitability for application as patterns. ROMONTA has an outstanding plasticity at temperatures just above its melting rango and exhibits great hardness at room temperature so that the thermal stability under load of the wax patterns can be said to be very good. Apart from these properties of the pattern wax, points that also matter in this connection are the property of being readily melted out of the mould, a low ash content and chemical and thermal resistance.
Waxes for patterns based on montan wax show a remarkably low shrinkage of 0.4 to 0.8%. Since waxes with an ash content especially due to silicates which are subject to carbonisation, the pattern wax must have an extremely low ash content. Owing to the fact that the ash content of ROMONTA Y amounts to 0.25% at the most, it is possible to keep the ash content of the pattern wax blends at a level as low as is optimum for this purpose.

MONTAN WAX for internal sealing of concrete

Internal sealing of concrete is a hydrophobic process which has been developed in recent years. A wax mixture, in the form of fine granules, of 2–3% is worked into the concrete mixture. After the concrete has completely set and hardened it is heated externally to more than 90 °C. The wax mixture melts and flows into all the pores and solidifies on cooling. By this means an internal sealing effect of the concrete's micro-pore structure results, so that penetration of water and soluble salts is completely prevented.

The internal sealing of concrete was especially developed for bridge constructions. The durability of concrete surfacings is increased many times. Internal sealing also has great economic advantages in other areas, e.g. concrete moulds for cable channels and paving stones.
Because of its polar components ROMONTA montan wax effects an extraordinarily strong binding of the sealing material to the inorganic substance. The most favourable mixture is 20–30% montan wax with 70–80% paraffin or paraffin slack wax.

Montan Wax Emulsions as Processing Aids

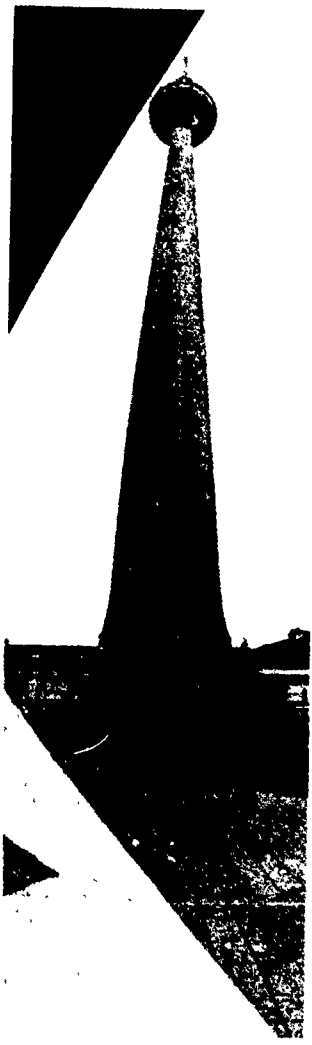
The property of montan wax of being readily converted into stable wax emulsions of extreme fine dispersion, with a relatively small technical expenditure, is one of its characteristic features. The cause of this bohaviour lies in the multifunctional character of the chemical composition of montan wax, this behaviour as to application being considerably favoured by the beneficial ratio of hydrophilic to hydrophobic groups of substances contained in the wax.

From the chemical and technical points of view, montan wax emulsions are products of utmost interest, since after evaporation of the water, they leave a film-like wax layer, characterized by a high thermal resistance and a high adhesion (bond strength) to the support. In addition to this, montan wax films have also a hydrophobic effect in that they prevent or reduce in a controlled way the emerging of water from or the entering of water into the treated surfaces.

This decidedly valuable characteristic of montan wax is being used to an ever increasing extent with a view to including this product as a processing auxiliary in a variety of modern processing techniques.

Montan Wax in Mould Release (Concrete)

Similarly to pressure casting, emulsified montan wax acts as a mould release agent in the commercial production of building components used in large-sized block construction. If no mould release agent is used, in the heated moulds of concrete-slab production lines, sticking to the mould or irregularly shaped surfaces of the large-sized block components frequently occur, which makes it necessary to rework or to scrap these concrete components. The application of aqueous, finely dispersed montan wax emulsions to the pre-heated metal shuttering prevents the concrete from adhering to the formwork and obviates problems for the work force. Due to the fact that there is no fire hazard emanating from the aqueous emulsion, that it has a long storage life and that both the montan wax and its emulsions are physiologically harmless, mould release agents on a montan wax base may also be classified as non-polluting and involving no environmental hazard at the works. Depending on the detailed problems concerned in each case, montan wax emulsions are applied with a solid matter content ranging between 10% and 18%.



The Montan Wax as a Conditioner

Fertilizers and other free-flowing fine-grain bulk materials are conditioned in order to increase their storage life and to reduce the strong affinity for water which is very common with bulk material. In this connection, the use of montan wax emulsions is limited to the application in defined sections of bulk material processing. Here the good film-forming effect of the montan wax emulsions is utilized. By spraying the bulk material with montan wax emulsions, followed by drying, a largely uniform wax film can be obtained, this wax film having a high abrasion resistance and hydrophobic effect and thus a lasting positive influence on the storage characteristics. This treatment, above all, reduces the tendency of the hydrophilic fine-grain substances towards agglomerating (lumpiness) taking place together with hydration in the storage container, which for a great number of applications would mean a depreciation of the value in use.

The fields of application of montan wax emulsions evidence that this wax has a multiple influence on the effects and reactions taking place where interfacial contacts occur.
Montan wax emulsions open up to the hard wax a wide range of applications and function as connecting link between montan wax and modern processes used in metallurgy, in building construction, construction engineering and for ensuring a good quality of bulk materials.

Formulations Pertaining to the Montan Wax Brochure

For Montan Wax in the Carbon Paper Industry

One-Time Carbon Paper (Black)

Montan wax ROMONTA 6715	12%
Paraffin Wax	22%
Petrolatum	18%
Mineral oil (100 SUS)	22.5%
Furnace soot (SRF)	20%
Clay (anhydrous)	5%
Methyl violet base	0.5%

Many-Time Carbon Paper (Black)

Montan wax ROMONTA	15%
Carnauba wax, fatty grey	15%
Paraffin wax	10%
Mineral oil (100 SUS)	34.5%
Furnace soot (SRF)	20%
Iron blue	5%
Methyl violet base	0.5%

For Montan Wax in the Dressings and Polishes Industry

Shoe Polish (Black)

Montan wax ROMONTA 665	5%
Hoechst or BASF wax OP	3.5%
Paraffin wax	16.5%
Ozokerite	2%
Polyethylene wax	2%
Nigrosin base hydrolyzate	1%
White spirit/oil of turpentine	69%

Self-Gloss Emulsion

Montan wax ROMONTA	10%
Oxethylated alkyl phenol	3%
Anoxidized synthetic hard paraffin wax	1%
Sodium tetraborate	0.1%
Water	86%

It is possible to add 10 to 25 parts of vinyl acetate or polyacrylate copolymer dispersion without protective colloid to the basic emulsion in order to improve the scuff resistance.

For Montan Wax as a Die-Release Agent in Die-Casting (Pressure C.)

Montan wax ROMONTA	20%
Oxethylated alkyl phenol	5%
Water	75%

For Montan Wax for Precision Casting

Montan Wax ROMONTA	30%
Montan resin	30%
Paraffin wax	30%
Paraffin slack wax	10%

For Montan Wax for Formwork Stripping off the Concrete

Montan wax ROMONTA	20%
Hard paraffin wax 54–56	1%
Sodium Tetraborate	0.2%
Oxethylated alkyl phenol	4%
Water	75%

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Chemistry and Technology of MONTAN WAX

By Dieter Jeodicke*

Montan wax today is considered an all inclusive designation for waxes obtained by extraction from coal, lignite and peat moss. It has become a collective name for waxes from different sources produced by the geological carbonization process. The previously used names (montan wax, lignite wax, peat wax) are still used with respect to peat wax. Peat wax differs so slightly in chemical and physical properties, as well as in its age, from the coal and lignites from which montan wax is produced that a special classification of this wax is not deemed necessary. In the detailed work "Chemistry and Technology of Montan Waxes" by Vcelak (1), it is also treated as a type of montan wax.

Montan waxes are obtained by extraction from the crude material "Original" waxes as well as "modified" waxes, are included in the generic term (in Germany they are called Romonta waxes; in U.S.A., Alpco waxes).

The montan* waxes which have been prepared by means of a stronger chemical reaction, for instance oxidation with chromic acid, sulfuric acid, etc., and which result in light waxes, are not specifically considered montan waxes.

Montan waxes, in early ages, were ingredients of plants growing in their respective areas Thus, montan waxes, from a genetic viewpoint, are fossilized plant waxes.

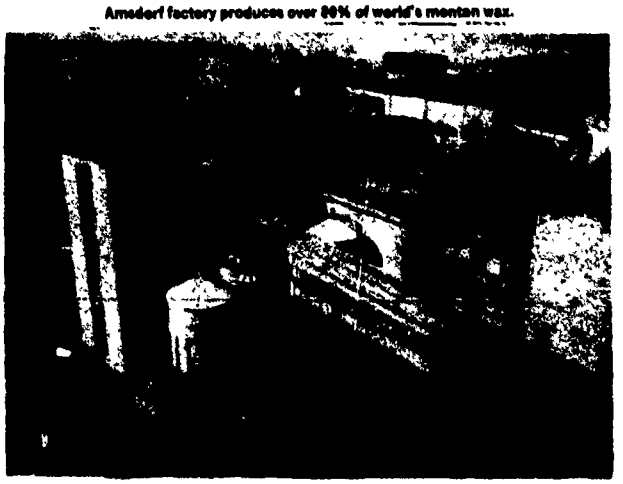
Lignite coal was created primarily in the Tertiary Age in North America, but as well in the Chalk Age, as a result of climatic conditions. Tremendous forests, similar to those found today in the tropical and temperate zones of America, periodically sank below water level into slimy moorish pits Over thousands of years, plant residues not destroyed by micro-organisms due to certain geological conditions, formed lignite coal by means of the so-called internal coking process If this process was interrupted, peat moss was formed

While cellulose and lignite components in the plants disintegrated, the more chemically stable waxes and resins remained unaffected If the plants had a high wax content, that is if various types of palms were involved in the coal formation, the result was wax-rich lignite deposits as they are found today The literature (2) gives further details on the creation of lignite.

In extracting brown coal, lignite and peat moss with organic solvents, a mixture composed primarily of waxes and resins is obtained. The ratio of wax to resin extracted can differ appreciably. If the extract consists principally of waxy material, it is called montan wax. If it is low in waxy material, it is called earth resin. To produce a commercially usable montan wax, it is necessary to begin with a coal with the highest possible wax content and the lowest possible resin content

For economic reasons, the extracted wax yield should amount to not less than 10% based on the water free crude material extracted, and the resin content of the extracted wax should not exceed 20%. Lignites meeting these requirements are not found in many places on earth. This was indicated by W. H. Ode and W A Selvig (3) on research of coals in the U S., and Peter (4) on examination of coals in Germany (see Table I and II) Vcelak (5) also has determined by studying research reports of numerous authors, that most lignites and peat mosses of other origin from those now used for montan wax production show

Amsdorf factory produces over 80% of world's montan wax.



*Translated from the German by F. S. Cluthe, president, Strohmeyer & Arpe Company, World Trade Center, New York

ORIGIN OF THE LIGNITE		YIELD a)	MELTING POINT	ASH CONTENT
STATE	COUNTY	%	°C	%
ARKANSAS	Clay	2.5	--	--
	Dallas	7.0	80-83	69
	Hot Spring	9.5	78-82	68
	Hot Springs	11.5	78-82	58
	Ouachita	6.3	81-84	68
	Ouachita	4.3	80-82	68
	Ouachita	6.9	80-82	68
	Polaski	7.6	78-81	60
	Saline	5.7	82-85	63
	Saline	5.4	75-83	65
CALIFORNIA	Amador	14.2	80-83	54
	Amador	3.3	78-82	65
	Amador	2.0	77-81	66
NORTH DAKOTA	Burleigh	3.2	--	--
	Divide	2.2	--	--
	Ward	3.3	--	--
	Williams	3.6	--	--
TEXAS	Harrison	3.7	--	
	Milam	3.7	--	--
VIRGINIA	Clay	2.0	--	--

a) Extraction with Benzol

Table I
Extraction of American lignite according to W. H. Ode and W. A. Selvig.

ORIGIN OF THE LIGNITE	YIELD a) %	MELTING POINT °C	ASH CONTENT %
EAST GERMANY			
Helbigsgrube	13.3-15.7	72-76	14.7
Hirschfeldgrube	17 -18	78-83	14-16
Hirschfeldgrube	11.4	78-80	15-17
Nitzenfeld	3.6	78-80	7+
Amsdorf	3.2	75	26
Calbe/Saal	3.6	76	27
Deuben	4.5-7.5	75-77	23-25
WEST GERMANY			
Borken (Hessen)	5 -6	--	--
Borken (Hessen)	14 - 19	73	15-16
Helmstedt	4.6	78-79	47
Hoeckergrube (Rheinland)	2.8	73.5	32
Neiderrhein (Rheinland)	2.5	83-85	30
Pechelbronn (Elsass)	7.8	85-90	70
Diedenbergen, Wiesenbusch	3.5	75	62
Grossalmerode	4.4-5.7	<=	35
Calbe/Saale	5.3	--	
Bitterfeld	5.7	--	
Braunkohlen, Pflanzerde	2	--	
Vogelsberg Oberhessen	4.5-8.5	--	
Meuselwitz Schleiferkohle	2.7-3.5	65-66	37

a) Extraction with Benzol

Table II
Extraction of German lignites according to E. Peter.

extraction results mostly between 2 and 8%.

If there are no coal or peat supplies of satisfactory low resin content, then the resin content of the extracted material can be lowered by selective extraction, as for instance Karabon (6) suggested for Polish lignites. The resinous material can be partially or completely removed from the extracted material by selective solvent treatment. The maximum pitch content today is 20%.

Production

The plants for the production of montan wax are located close to the sources of the raw material. Montan wax is produced exclusively from lignites in Germany, the U.S.A. and Russia. Production in Czechoslovakia was discontinued in 1968 because of a shortage of suitable lignite. A small test plant was put into operation in Russia in 1961 to prepare montan wax from peat, but whether it is still in operation is not known. Many efforts have been made to produce montan wax in other countries, as is reported in detail by V. Veelak (7). However, the shortage of wax-rich lignites also low in resins, did not permit further practical development.

Production of montan wax started in Germany, the classic country of the lignite industries. The first plant went into operation in 1905, in Wansleben, near Halle (Saale). Production at this unit has been discontinued. The largest factory in the world today is located in Amsdorf, a few miles from the original plant. This produces over 80% of the world's montan wax.

The montan waxes produced at this location are marketed under the name Romonta, (until 1960 Riebeck), and are known throughout the wax-using industries around the globe. A second but much smaller plant has been producing montan wax since 1957, in Treysa, near Kasser, West Germany. Its crude products are not sold, but are used entirely in the preparation of light colored hard waxes.

A survey made in 1945 by the U.S. Bureau of Mines (8) of the lignites in the U.S., shows there are deposits

in Arkansas and California suitable for the production of montan wax. Especially in Amador County, California, there are lignites with high wax and relatively low resin content The various types produced are known as Alpco waxes.

In 1959, Russia, in Semjonowska, near Alexandria, Ukrania, began producing montan wax from lignite. The wax content of the lignite is not as high as that of lignites in Germany and the U.S. The major part of this production is used internally.

Extraction

Two methods are used in the extraction of lignite for the production of montan wax; one is a batch process and the other continuous. The batch method is employed at the Buena Vista plant in the U S and the one in Treysa, West Germany The Semjonowska plant in the U.S.S.R. employs the continuous method. The Amsdorf plants in the German Democratic Republic were gradually converted from batch to the continuous method ten to fifteen years ago.

The preparation of montan waxes by both methods is described in detail by J. Metzger (9)

Crude lignite consists of a mixture of small and large pieces with a water content of about 50%. For batch production, it is first broken down until it is about the size of a nut by a system of rollers, mills and sieves Following this, it is dumped in tubular dryers, of the type used in modern briquette plants After the fine dust has been sieved away, the lignite is fed into the extraction unit. At this point, water content ranges from 10 to 15% and the size of the particles runs from 0 6 to 6mm

The extraction chambers for batch production are cylindrical vertical iron tanks securely sealed at the top and bottom The lignite is treated in the chambers for one hour with hot solvent, during which the greatest part of the contained wax and resinous materials are dissolved. The counter-current principle of extraction is employed. The solvent used initially contains some wax from a previous operation. The final washing is with pure solvent. After extraction, super-heated steam is pumped into the chambers to remove residual solvent.

The residual lignite, free of solvent, is removed from the chamber and used in power plants or converted into briquettes.

The crude montan wax is obtained by distilling the solvent from the solvent wax mixture. After the final traces of solvent have been removed by passing superheated steam through the molten wax, the wax is poured into blocks or granulated, and packed for shipment.

In continuous extraction, the lignite is broken up into small pieces just as for batch extraction, however, after drying, it is reduced further in size to a diameter of 0.15 to 1.5mm. This finely ground lignite is then conveyed to the extraction unit.

The extraction is accomplished continuously in so-called "extraction machines." These are units of about 10m in length and 1 1/2m wide through which the lignite is moved slowly on a conveyer. During its passage, hot solvent rains down on the lignite, and most of the wax and resins are dissolved. The counter-current principle also is employed. From the extraction unit, the lignite is fed continuously into steam scrubbers In these units, the solvent is removed by superheated steam. As before, the extracted lignite is used in the power plant or made into briquettes The extracted montan wax is concentrated as in the batch method, and poured into blocks or granulated.

The extraction procedures employed in the montan wax factories

TABLE III

EFFECT OF TYPES OF SOLVENTS ON YIELD AND COMPOSITION OF YIELD ACCORDING TO H. PETER

TYPE OF SOLVENT	SOLVENT	YIELD %	ETHER SOLUBLE (% RESIN)	PARAFFIN INSOLUBLE (% ASPHALT)	OTHER STATISTICS				
					ASH %	ACID #	ESTER #	SAPONIFICATION #	SOLIDIFICATION °C
ALCOHOLS	Methanol	2.8	41	29	3.0	30	28	58	78
	Ethanol	6.8	27	23	1.5	46	34	80	74
	Propanol	13.5	20	14	0.3	40	50	82	78.5
	Iso-Amyl Alcohol	15.1	18	14	0.3	32	50	82	74
ESTERS	Ethylacetate	11.7	23	7	0.2	34	45	70	74.5
	Butylacetate	14.3	16	7	0.1	40	45	85	76
KETONE	Methyl-Ethyl-Ketone	12.7	21	21	0.2	47	56	103	73.5
CHLORINATED HYDROCARBON	Carbon Tetra-Chloride	10.3	13	0	0.2	29	35	64	76.5
	Trichloro-ethylene	12.7	13	1	0.3	33	45	78	73.5
	Dichloro-ethylene	11.7	10.5	1	0.1	32	45	77	77
ALIPHATIC HYDROCARBON	Petroleum Benzene (40-65°C)	9.9	11	0	0.1	30	42	70	78
	Petroleum Benzene (90-105°C)	9.9	13	0	0.1	29	45	74	77
	Petroleum Benzene (107-135°C)	10.9	14	2	0.1	29	45	74	78
	Lignite benzene (70-110°C)	11.1	14	0	0.1	32	44	76	77
	Lignite Benzene (103-125°C)	11.9	14	0	0.3	29	36	65	77
CYCLICAL HYDROCARBON	Cyclohexane	9.9	13	0	0.3	29	53	82	76
AROMATIC HYDROCARBON	Benzol	12.0	14	0.4	0.2	31	42	73	75 5
	Toluol	12.4	14.5	0.4	0.3	32	50	82	77
	Xylol	12.7	15.5	0.1	0.3	29	47	76	77
MIXTURES OF ALCOHOLS AND AROMATIC HYDROCARBONS	Benzol (50%) Ethyl Alcohol (50%)	16.4	21	25	0.8	30	47	85	74
	Benzol (90%) Ethyl Alcohol (10%)	14.9	16	12	0.5	34	43	79	76

TABLE IV

EFFECT OF SOLVENTS ON YIELD AND COMPOSITION OF YIELD ACCORDING TO U. S. PATENT

TYPE OF SOLVENT	SOLVENT	Yield %	Composition: Wax %	Composition: Resin %	Composition: Asphalt %	Standards: Acid No.	Standards: Ester No.	Standards: Sap. No.	Standards: M. pt. °C.
ALCOHOL	Methanol	6.0	70.0	20.3	0.9	95	74	169	76
	Ethanol	6.3	70.3	20.5	0.2	99	78	169	79
	n-Propanol	11.2	77.0	22.2	0.0	53	97	150	85
	Iso-Propanol	9.6	84.9	15.0	0.1	85	72	157	82
	Iso-Butanol	23.6	67.9	27.9	10.2	61	101	162	87
ESTER	Ethyl Acetate	11.5	87.3	12.5	0.2	70	90	160	84
	Iso-Propyl-Acetate	13 0	80.5	18.5	1.0	64	73	137	82
	Cellulose Acetate	9.0	83.7	15 3	1.0	65	113	178	86
KETONE	Methyl-Ethyl-Ketone	11.4	87.1	11.2	1.7	75	80	155	87
CHLORINATED HYDRO-CARBONS	Dichloro-ethylene	10.1	82.9	12.4	4.7	57	91	148	87
	Tetrachloro-ethylene	9.4	78.2	13.4	8.4	50	90	140	87
ALIPHATIC HYDRO-CARBON	n-Hexane	4.4	80.9	18.5	0.6	69	69	98	83
	Rubber ac.vent	5.8	83.6	15.4	1.0	69	64	133	87
AROMATIC HYDRO-CARBON	Toluene	9.0	81.0	17.2	1.8	56	78	134	87
MIXTURES OF ALIPHATIC & AROMATIC HYDRO-CARBONS	Type 97 A	9.4	80.8	13.0	6.2	52	133	185	87
	Type 25o (10% Arom)	6.2	82.9	13.0	4.1	52	74	126	86
	Type 50/50 (50% Arom)	6.5	79.3	12.9	7.8	50	68	116	87

of Buena Vista, Semjonowskaja and Treysa differ slightly from those that have been described for the Amsdorf factors. However, in general, the principle is the same.

The methods used in batch and continuous extraction have both advantages and disadvantages Batch extraction is the only one permitting high pressures in which extraction can take place above the boiling point of the solvent This is advantageous because the speed of extraction can be increased. However, in order to maintain a good flow of solvent, the smaller particles of lignite must be removed and thus a considerable part of the valuable wax-containing lignite is not extracted. Besides taking better advantage of available lignite continuous extraction lends itself to a high degree of automation

Solvents

In treating identical lignites or peat moss, the total yield and the composition of the yield are determined primarily by the type of solvent used This is reported in the literature by numerous authors Detailed studies using various types of solvents were made by E Peter (10) with German lignite, by H R Fleck (11) with California lignite, and by J. Reilly and co-workers (12) with Irish peat moss As is shown in Tables III and IV, the amount of montan asphalt in the total yield is influenced strongly by the type of solvent used. The greatest yield, according to Peter and Reilly, occurs when the solvents are mixtures of hydrocarbons and alcohols. In this case, the presence of non-waxy materials, primarily montan asphalts, is so high that the end product has very little use as montan wax

Taking into consideration the production of a wax with the greatest acceptance in industry today, montan wax factories at present use mixtures of aliphatic and aromatic hydrocarbons as the primary solvents

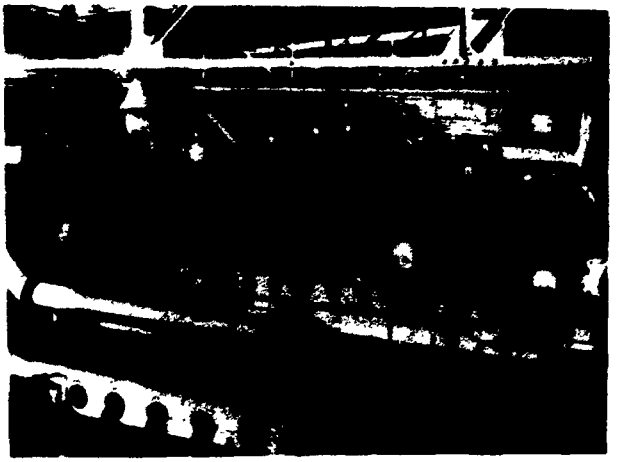
Composition

Since the turn of the century, many articles have been written on the composition of montan wax It was probably due to the complexity of the material being studied plus the lack of refined analytical procedures that the information published earlier by various researchers had very little correlation Only in the past 20 years, using modern analytical methods, has a clear understanding been reached of the actual composition of montan wax

Montan waxes are complicated mixtures of numerous different chemical compounds They can be divided into three primary groups, pure waxes—70%, resins—20%; asphalt-like materials—10% The analytical and quantitative separation of montan wax into these groups can be made by means of selective solvent treatments

The resins can be quite easily separated, because, as opposed to

A battery of continuous extracting machines



the wax and asphaltic components they are soluble at lower temperatures (−10° to −20°C) in various solvents W Presting and co-workers (13-14), in their efforts to separate the different components used ethyl acetate, methanol and methylene chloride W Schaack and D Foedisch (15) preferred acetone, and H R Fleck (16) worked with n-heptane

It is more difficult to obtain complete separation of the asphaltic ingredients Several extractions of the resin-free montan wax with isopropyl alcohol gave the best results as determined by W Presting and K Steinbach (17) The asphaltic materials which separate as a viscous black deposit on the side of the vessel, however, have a tendency to retain certain amounts of pure waxes

The resins of montan wax are mostly designated as montan pitch, the asphaltic materials as montan asphalt, called dark material by Presting and Steinbach (17) The three components separated by W Schaak and D Foedisch (15) are shown in Table V

	Pure waxes	Resins	Asphalts a)
Acid No.	31	27	3^
Ester No	67	40	116
Sap. No.	98	95	120
Iodine No	34	235	8.
M pt °C	80 6	^^)	^^)
Ash %	\ 05	6 06	2.05
Viscosity (90°C) cp	52	^^)	^^)
Sulfur %	5 3	2 5	3 4
Carbon %	^0 2	76 6	77 2
Hydrogen %	1 ^	1^ 9	11 6
Color	light brown	red brown	black

a) Contains about 30% waxes

Table V
Composition of German montan wax according to W. Schaack and D. Foedisch.

Chain Length	German Montan Wax		American Montan Wax	
C - Atom	Acids %	Alcohols %	Acids %	Alcohols %
22	5.8	"	"	"
23	2.2	6.3	2.3	10.5
24	2 0	"	"	"
25	6.2	6.9	13 3	12.3
26	3 3	6.5	"	"
27	13.7	13 3	10.8	14.8
28	4.7	3.0	"	"
29	21.3	22 9	42 7	14.4
30	5.7	7.3	"	"
31	23 5	20 8	25.0	"
32	3.4	5 8	"	"
33	9.5	13.3	"	"
34	3.7	6.5	"	"

a) According to investigations of W. Presting and Th. Kreuter as well as H. R. Fleck

Table VI
Chain lengths of wax acids and wax alcohols according to investigations of W. Presting and Th. Kreuter as well as H. R. Fleck.

Pure Waxes

The pure wax components of montan wax consist primarily just as today's vegetables waxes, of a mixture of esters of long chained acids and alcohols, as well as free long chained acids Hydrocarbons, free alcohols, and ketones are present only in lesser amounts The conflicting results of earlier investigations on the composition of these components led to many misunderstandings, for instance, whether montanic acid had a carbon chain length of 28 or 29 carbon atoms Only recently, due to the detailed work of Presting, Steinbach and Kreuter (13, 14, 18) with German montan wax, and Fleck (19) with American montan wax, could a clear understanding be found as to the composition of these waxy compounds

These authors, as well as H P Kaufmann and B Das (20), proved by means of gas chromatography as well as with infra-red spectroscopy, the higher fatty acids, alcohols and the esters together with ketones and hydrocarbons account for about 90% of the components with even numbers of carbon atoms The largest amounts are combinations of 24, 26, 28 and 30 carbon atoms The carbon chain length of the wax acids as determined by Presting and Kreuter (14) from the German wax, and by Fleck (19) from the American wax, are shown in Table VI. According to Presting and Kreuter (18), their composition consists of 60% mono-carbon acids, and 40% di-carbon acids in the free and esterified acids Diole and oxy-acids are also present in small amounts

Pure wax components of montan wax are wax esters—62-68%, free acids—22-26%, wax alcohols (free), wax ketones, wax hydrocarbons—7-15%

Resinous Materials

According to H Steinbrecher (21), montan resins belong in the class of plant resin acids, that is, the same group to which fossilized amber belongs They consist of approximately 70% neutral (terpene, polyterpene) and approximately 30% of

acidic acids (resinic acid and oxyresinic acid) S. Ruhemann and H Raud (22) found in montan resins, among other things, triterpenic compounds, such as betulin, allobetulin and oxyallobetulin. Recently V Jarolin, K. Hejno, F Sorm and co-workers (23) have broken down the resins chromatographically and found not only the above mentioned betulins, but also a number of further chemical compounds, such as triterpenic ketones, alcohols and acids

Asphaltic Materials

J. Marcusson and H Smelkus (24) who were the first to examine the asphaltic components of montan wax, noticed that oxyacids were the prime constituents Further investigations recently were made by W Presting and K Steinbech (17). They separated the asphaltic materials (called dark materials by them) by high pressure saponification and found that they consisted primarily of free and wax alcohols esterified with oxyresinic acid. The dark color was caused by the inclusion of sulfur and salts in the compounds Because of the rubberlike and hard to dissolve character of the asphaltic materials, it must be assumed that the oxyresinic acids have been polymerized into higher molecular compounds

Properties of Montan Waxes

Many references appear in the literature on the chemical and physical properties of montan waxes, or as they can be called, coal or peat moss extracts The values that were determined, especially with regard to acid number, ester number, saponification number, iodine number and resin and asphalt content, very often depended upon the methods of analysis used. Large differences in these figures do not therefore always prove that there are great differences in composition. For instance in the older literature, the acid, ester and saponification numbers for German montan wax very often were quite low, and can be blamed only on the cruder analytical methods available at that time.

Today, the DDR-Standards 5881 (25) are the ruling analytical methods for German montan wax These are specially developed methods for analyzing dark montan wax If the usual DGF methods (26) are used, very small variations are found to exist For determining specifications for the American montan waxes (Alpco waxes), specific methods have been established by the manufacturer which in general differ very little from the German methods Samples of German, U S, Russian and Czech montan waxes were examined in Germany, using the same analytical method, and the results are summarized in Table VII. It should be noted that the waxes prepared from the various lignites definitely are not similar In general therefore, one montan wax cannot be substituted for another of different origin

Montan waxes are very hard waxes of dark brown to black brown color In a solid state they show a more or less crystalline structure which becomes less pronounced the greater the resin and asphalt contents While they are odorless in the solid state at room temperature, they have a characteristic odor when being melted at an elevated temperature The expert can identify the origin of various montan waxes merely by smelling them

In turpentine, white mineral spirits and similar solvents, montan waxes with low asphalt content are completely soluble at temperatures running from 40° to 50°C On cooling of a concentrated solution, pasty masses form a deposit in which some of the solvent is combined with the wax in a gel formation The ability

Table VII
Specifications of montan waxes of different origin.

ORIGIN	COCOS	GERMANY	USA	HUNGARY
TECHNICAL DESIGNATION	GERMANIA	HOMONTA	ALPCO 16	-----
DENSITY	1.03	1.03	1.03	1.03
PENETRATION 0.1 mm	1	1	1	1
MELTING POINT °C	82	86	87	88
SOLIDIFICATION POINT °C	76	78	78	80
VISCOSITY (90°C) cp	350	78	200	60
ACID NUMBER	35	32	40	30
ESTER NUMBER	82	80	84	82
SAPONIFICATION NUMBER	97	92	112	88
ASH %	0.6	0.2	0.5	0.2
RESIN %	32	33	31	34
ASPHALT %	6	3	10	3

Table VIII
Effect of the addition of German (Romonta) montan wax to paraffin according to G. Fenton.

COMPOSITION MONTAN WAX	PARAFFIN	M. PT	SOLIDIFICATION POINT	PENETRATION (25°C, 100 g, 5")
%	%	°C	°C	0.1 mm.
0	100	54.5	53.5	17.0
5	95	76	57	13 0
10	90	78	59	11.0
20	80	81	61.5	8.0
30	70	81	63	6.5
40	60	81.5	64	5.0
50	50	81.5	65	4.0
60	40	87.5	66	3.5
70	30	83	68	2.5
80	20	84	71	2.0
90	10	85	74 5	2.0
100	0	87	77	1.5

TABLE 9

AMERICAN MONTAN WAX

TYPICAL PHYSICAL AND CHEMICAL SPECIFICATIONS *)

Wax Type	°C m.pt.,°C	Acid No.	Sap. No.	Pen	Oleod	Gaston I	Asphalts I
ALPCO 16	66	44	93	42	46	16	12
ALPCO 1600	86	40	96	40	45	22	10
ALPCO 1630	85	28	97	35	30	13	10
ALPCO 1650	82	10	97	25	20	13	24
ALPCO 28	84.5	27	87	30	24	21	0
ALPCO 2-LAC	98.5	0	50	NOT DETERMINABLE WITH CURRENT TEST METHOD			
ALPCO 400	81	41	93	42	0	22	0
ALPCO 500 **)	85	83	123	27	0	4	0
ALPCO 600 **)	85	88		27	0	4	0

*) Prepared according to reports from American Lignite Products Co., Inc., Inco, California USA (Now Alpco Div., Interpace Corporation).

**) Developmental Product.

TABLE 10

GERMAN MONTAN WAXES

CHARACTERISTIC PHYSICAL AND CHEMICAL SPECIFICATIONS *)

WAX TYPE	°C m.pt.,°C	Acid No.	Sap. No.	(Acetone soluble) (Basis 1)	(0.1 mol Penetration (25°C 100 g, 5")	Ash I
DOMONTA REGULAR	84-88	30-35	87-97	11-15	max. 1	max. 0.4
DOMONTA 6715	86-90	15-20	92-102	5-9	max. 1	max. 0.5
DOMONTA T	84-88	30-35	87-97	12-16	max. 1	max. 0.4
DOMONTA S	84-88	27-32	83-93	9-13	max. 1	max. 0.2

*) Prepared at the manufacturing plant at Roßlingen am See, GDR.

to bind solvents, however, is much less then that of carnauba wax At temperatures over 80°C, montan waxes with low asphalt content dissolve completely in mineral oils and melted paraffin Montan wax-paraffin mixtures solidify into homogenous hardness

According to G Fenton (27) the action of German montan wax is similar to that of carnauba wax in that it increases the melting point and lowers the penetration value of paraffin (see Table VIII)

Different Types of Montan Waxes

A whole series of different types of montan waxes are produced both in Germany and in the U S They are primarily brown to dark brown, very hard waxes, differing in their specifications as well as their physical-chemical behavior These variations are due to different types of extraction methods or as a result of relatively simple physical or chemical treatments For instance, by using selective solvents during extraction of the lignite, the resin and asphalt materials can be partially or completely removed Similarly, by means of partial saponification of free wax acids, esterfication and similar reactions, crystalline characteristics, oil and solvent retention can be changed According to W Presting (28) a simple thermal treatment of montan wax can bring about a considerable change in its original character

The montan wax manufacturing plants in Germany and the U S offer users specifically designed types, meeting nearly every application requirement. Even though the various types shown in Tables IX and X differ only very slightly they give considerably different end results in manufacturing processes

World Production

World production of montan wax has more than doubled in the past 15 years because of steadily increasing demand About 80% of the total world production is accounted for by the Amsdorf factories in the German Democratic Republic The remaining production is divided among producers in the U S , Russia and West German

Uses of Montan Wax

Large quantities of montan wax extracted from German lignite are made into light colored waxes by various techniques Destructive oxidation of the colored ingredients with chromic acid/sulfuric acid, dichromate/sulfuric acid or nitric acid sulfuric acid, gives good yields of very hard light waxes Most of the well known Hoechst waxes and BASF waxes are prepared by this method Steam-vacuum distillation produces a low yield of medium-hard light waxes which are sold as "double bleached montan waxes" These are considered to be technically antique A detailed description of the production of lighter waxes from montan wax can be found in the literature by Vcelak (29)

The carbon paper industry is the largest direct user of montan waxes Due to the great hardness and the ease of dispersion of carbon black and dye pigments in montan wax it is used in great quantities in the preparation of one-time carbon papers in the U S , Europe and elsewhere The stable price of montan wax compared with continuous fluctuations of other natural waxes adds to its popularity Special types of montan wax for the carbon paper industry have been developed by producers in the U S. and Germany over the past ten years These are listed in Tables IX and X

Until about 16 years ago the polish industry was the greatest direct user of montan wax. The wax was used primarily in production of dark colored polishes for use on shoes, leather and floors Montan wax is still employed for this application in many Eastern countries

Use of montan wax has spread into nearly all wax consuming industrial areas It is used as a dispersing and lubricating ingredient, as a mold release agent, as an additive to insulating materials. It is also used in the preparation of casting waxes, ski wax, among other specialties. In Germany, montan wax has been used the past few years as an additive to

street asphalts where it improves the adhesion of the tar and also makes it more stable at low temperatures

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Mr. BALDINI. Before we start you asked a question before about what is montan wax. I don't blame you for asking that. Ninety-nine out of one hundred people don't know that either. We do have some pictures here, which unfortunately I don't have 30 copies of, of the operation in East Germany and of the Alpco operation in California, some samples of the wax as, of the montan wax as produced there and a sample of the briquettes that are made also over there which I will be discussing.

You may wish to refer to these pictures.

I must begin by saying there are only so many tons a day you can put through a solvent extractor. The production of that extractor therefore depends entirely on the wax content of the lignite. Montan is made by solvent extraction. It is I might explain a fossilized vegetable wax about 6 million years old that occurs in lignite which is one stage of coal. The East German montan wax operation, located near Leipzig, produced about 120 million pounds a year from virtually unlimited, contiguous reserves of lignite containing a constant 14 to 17 percent of wax.

Of this, my company sells about 5 million pounds a year in the United States, or about two-thirds of the U.S. market. These U.S. sales represent only about 3.75 percent of our supplier's total sales. I might point out also that it is generally conceded that lignite must contain at least 10 percent of wax in order to make production economic.

I must emphasize that we are an independent American company with no connection to the East German operation other than that between buyer and seller. We negotiate annually for price and quantity, and these negotiations are at arm's length and often difficult.

California, with noncontiguous, declining deposits, originally produced about 4 million pounds of wax a year from deposits containing over 12 percent wax. It now produces about 2 million pounds a year from lignite with only 5 to 5½ percent wax, and yields are declining.

The plant complex near Leipzig is a vertically integrated operation producing about 83 percent of the country's energy in the form of briquettes. There is an onsite powerplant, and a wax plant as well. The complex is highly efficient, large in scale, and has modern specialized equipment. To give some idea of the scale of the whole operation, the powerplant also supplies electricity to the city of Leipzig as well as a number of other nearby cities. Respecting montan wax the plant output represents 98 percent of world production.

The American Lignite plant, on the other hand, is antiquated, minute in scale by comparison, and produces only montan wax, using Canadian natural gas as fuel.

It is an unfortunate fact of life that some enterprises are inherently inefficient. The declining wax content of American Lignites' reserves emphasize this point.

The East Germany mine currently being worked is scheduled to be depleted in the year 2030, with three untouched mines in reserve. Thus, our marketing strategy is based on long-term preservation of the market. Alpco's strategy, on the other hand, is of necessity to maximize return during the months or years they have left.

Mr. Chairman, a comparison of Alpco's and Strohmeyer's prices are set forth at page 8 of our statement. If one examines that comparison, it is evident that Alpco's prices in 1977 began a rapid in-

crease. That increase coincided roughly with the passing of the wax facility into new ownership. Our prices, Mr. Chairman, are not established to cause Alpco injury: since many customers insist on two sources of supply, we would much prefer to see them viable. However, we must base our pricing structure on what we consider the market can bear consistent with profitability, without losing business to alternative materials such as carnauba, which is now relatively cheaper than Alpco's material, or petrochemicals, and we must maintain our market for the long range. We cannot base our prices on the protection of a competitor with an inherently uneconomic operation.

American Lignite, by their own statements, are producing and selling to capacity. This being the case, and several of our mutual customers are still reporting difficulties and delays in obtaining deliveries from them, our prices can hardly be causing them injury.

We do not feel that the remedy for their difficulties is to be found in a tariff which would destroy the market for montan wax, and with it two firms; severely inflate costs to the U.S. carbon paper industry, jeopardizing its future and that of the thousands it employs; and increase the use of alternative waxes, including carnauba and petroleum products.

Mr. GIBBONS. Thank you, sir, and thank you for educating me on this subject. I never heard of montan wax in my life.

Mr. TRIEBER. Mr. Chairman, may I add something in commentary to Mr. Shumway's statement. He said the modest imposition of 11-cents-per-pound duty would only cause a 3.8-percent increase in the cost of goods to our customers. I would like to point out that it is a fact of life today in the montan carbon paper industry that Moore Business Forms is by far the industry leader. And they are currently pricing their carbon list paper at only a 5-percent increment above their carbon interleaf paper. At 3.8-percent increase in cost for montan carbon paper is no longer viable. It is having enough tough time against Xerox machines today.

We are talking about mom-and-pop-people companies, who employ 30 or 40 people here and there. It is a very regional business and cost intensive as far as shipping goes and we would hurt a lot of people.

Mr. GIBBONS. Let me ask you, Is East Germany selling to you at the same price as it sells around the world?

Mr. BALDINI. Our negotiations are in U.S. dollars. There may be differences in exchanges and we frankly do not know at what price everybody in the world buys. Because every year we go over and fight like hell and come to a conclusion on the price. We may do better than some of the others and we may do worse and I frankly do not know. But it is my impression the prices are the same. I can assure you they are a profitmaking organization. They are not giving the stuff away.

They are asking for the Moon every year.

Mr. GIBBONS. Mr. Moore.

Mr. MOORE. I think you asked the question I had, Mr. Chairman.

Mr. SMITH. I am Harrell Smith, counsel. Mr. Moore asked a question about cost of production. Much of the purpose of showing the pictures of these differing scales of operations, one being extremely large and one being rather small, is designed to show that even if you attributed costs from almost any country in the world and said those

are the imputed costs, there would still be such a difference in the scale of operations that the enterprise that produces less than 2 percent is hard pressed by the enterprise that produces 98 percent. Even if they were operating side by side in the United States, it would be tough for the California operation to realize the economies of scale.

Mr. MOORE. Well, I appreciate that comment but sometimes we found in dealing with the state-run economy that economies of scale may not be reflected in the real price at all. You gentlemen don't know what anybody else is paying for this wax. And it may that the East Germans are making a good profit at this. We would certainly like to find out. We find our Treasury Department tells us they are unable to determine that in terms of China, the Soviet Union, and certain other countries we deal with. That is one of the problems we had in going to the MTN. East Germany is not a signatory to GATT or MTN, but for those that are, we have the tough problem of finding out if they are being accurate or not.

That is the only way we can protect American enterprise from predatory pricing and from dumping. And we have that problem here, it appears.

Mr. BALDINI. One of the reasons why we can't compare the prices is because each country is dealing in its own currency.

Mr. MOORE. We can convert currencies. Any given day what you pay in dollars is worth so much in marks or francs or anything else.

Mr. BALDINI. Yes, sir; I know our price in dollars versus somebody else's in francs with the dollars bouncing around the way they have in the past year are not necessarily comparable. They may be comparable at one moment in the beginning of the contract and noncomparable by the end.

Mr. MOORE. Let us take any point of the contract. I agree with you the currencies do change. If you make a year's contract there is no question that what you enter into at the beginning of the year may not work out that way at the end of the year. What I am asking is just give us a comparison at any point in the year.

Mr. BALDINI. To the best of our knowledge the prices are roughly comparable.

Mr. MOORE. Do you know what West German or Italian or French buyers of this wax are paying?

Mr. BALDINI. No; I do not.

Mr. TREIBER. One other thing to keep in mind, sir, is that the United States is very much a paper-oriented economy.

Mr. MOORE. I am well aware of that.

Mr. GIBBONS. We are well aware of that.

Mr. TREIBER. And another thing I would like to bring to your attention is Strohmeyer and Arpe has been in business since 1918, and dealing with the montan wax since 1907, and was dealing with this very plant and mine when it was a free market economy before it became in the eastern zone. And it was a profitable operation then. And all that has been done to it is to improve it.

Mr. MOORE. Well, there has been one slight difference in the country.

Mr. TREIBER. I am talking from a technical standpoint.

Mr. MOORE. I am talking about that too. They can just decree this plant to operate regardless of whether it is profitable or not. That is an advantage we don't have in the free enterprise system I guess.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you.

It has been very interesting. We have had a request from Mr. Paul Butterweck to testify early but we have all of these other people waiting whom we have scheduled and we will be glad to hear from you, but I think you got your case won, and we will just accept a statement we will place in the record from you and you can go ahead and catch the transportation that you need.

Mr. BUTTERWECK. Well, I will wait.

Mr. GIBBONS. All right, fine.

We had a request very early in the day from some of these other people. Dr. Jula from Polaroid. We will put your statement in the record and you may proceed as you wish.

STATEMENT OF THEODORE JULA, SENIOR RESEARCH GROUP LEADER, POLAROID CORP.; ACCOMPANIED BY RICHARD C. BARON, CHEMICAL PRODUCTS MANAGER; JANET HUNTER, INTERNATIONAL BUSINESS-GOVERNMENTAL COUNSELORS, INC.

Mr. JULA. I am Dr. Ted Jula, senior research group leader, Polaroid Corp. With me on my left is Mr. Richard Baron, chemical products manger of Polaroid, and on my right is Mrs. Janet Hunter, International Business Governmental Counselor.

We are grateful for this opportunity to summarize our proposed statement of H.R. 6278 introduced by Representative James Shannon to suspend until December 31, 1982 the import duty on the compound, 1,3-propanediol-di(para-aminobenzoate). This material, designated by the trademark, Polacure, is also known as trimethylene glycol-di(para-aminobenzoate). For simplicity, I will refer to it by the acronym, T-M-A-B, or Tee-Mab.

TMAB was developed by Polaroid as a safe, nontoxic curing agent for urethane elastomers, as a replacement for the known carcinogen, 4,4-methylene-bis-(2-chloroaniline), which is commonly known by the duPont trademark, MOCA.

Although duPont ceased manufacturing MOCA in 1978, it is still used by the U.S. urethane industry—an industry composed primarily of small processors. The last remaining domestic producer of MOCA, Anderson Development Corp., was effectively closed in 1979, by order of the Michigan Department of Natural Resources, due to environmental contamination caused by MOCA. Thus, the only current sources of MOCA are existing inventories, and material imported from Japan.

In 1974, OSHA sought a zero exposure level for MOCA which would have effectively banned its use. This standard was later remanded to OSHA by the court of appeals, on procedural grounds. OSHA is currently drafting new regulations based upon the special hazard review of MOCA issued in 1978 by NIOSH. MOCA is now subject to strict regulatory standards in California and Michigan.

Polaroid developed TMAB specifically as an effective, safe replacement for MOCA in film rollers for Polaroid Land Cameras. TMAB is now acknowledged by duPont as the best direct substitute for MOCA. TMAB-cured elastomers have been tested thoroughly in a wide variety

of industrial, consumer, and military applications, as diverse as computer parts, skateboard wheels, and nuclear weapons.

TMAB has also been extensively tested biologically, and produced no toxic, mutagenic or carcinogenic effects.

There is, however, presently no manufacturer of TMAB in the United States. Polaroid does not have access to domestic raw materials, or production capacity to manufacture it commercially. TMAB is currently produced by only two companies in the world, both located in Europe. They are A. B. Bofors of Sweden and Dynamet Nobel of West Germany.

Their activity has been at Polaroid's instigation, after exhaustive searching by Polaroid failed to identify a single domestic source. Even duPont stated they could not manufacture TMAB economically, due to lack of capacity, and a domestic source for the essential raw materials.

To meet the urethane industry's demand for a safe and effective MOCA replacement, Polaroid has elected to market TMAB imported from one of the European suppliers. If price criteria are met, the initial volume is expected to be several hundred thousands pounds per year, with potential growth to 2 million to 5 million pounds annually.

If U.S. demand proves sufficient, both Dynamet Nobel and A. B. Bofors have submitted statements of intent to construct plant facilities in Mobile, Ala. or Muskegon, Mich. to manufacture TMAB. This would result in expanded employment opportunities in the U.S. construction and chemical industries.

Cost, however, will determine the initial success of Polaroid's marketing efforts. TMAB is inherently more expensive than MOCA, due to raw materials costs. During the introductory phase, this cost difference will be crucial, since MOCA is still being imported from Japan.

A major cost component of TMAB is the tariff. If the U.S. import duty is temporarily suspended, TMAB can be introduced commercially at a price close to $6 per pound. If the duty suspension is not granted, initial pricing must be over $7.25 per pound, which effectively precludes commercialization. In a high volume, dedicated U.S. facility, a commercial price of $5 per pound is estimated.

Temporary suspension of the duty would, therefore, encourage the domestic use of TMAB, a safe alternative to the known carcinogen, MOCA. Since there are no domestic producers of either TMAB or MOCA, no U.S. firm or workers would be harmed by the proposed suspension. It would reduce the inflationary impact on small processors who purchase TMAB in place of MOCA. It will permit Polaroid to develop a viable market for TMAB, which will ultimately lead to construction and operation of a new manufacturing plant in the United States.

In conclusion, the Polaroid Corp. respectfully urges the subcommittee to approve this legislation to suspend duties on 1, 3-propanediol-di-para-aminobenzoate until December 31, 1982.

Thank you. We would be happy to provide the committee with any additional information or to answer questions.

[The prepared statement follows:]

STATEMENT OF DR. THEODORE JULA, ON BEHALF OF THE POLAROID CORP.

Mr. Chairman, members of the Trade Subcommittee, my name is Dr. Theodore Jula, Senior Research Group Leader, of the Polaroid Corporation, 540 Technology Square, Cambridge, Massachusetts 02139. I am accompanied today by Richard C. Baron, Chemical Products Manager of Polaroid. Although Polaroid is primarily known as a manufacturer of innovative photographic products, many of the materials that are used to manufacture our cameras and film are also being improved or undergoing change. It is one of these materials that brings us to this hearing.

We are grateful for this opportunity to testify in support of H.R. 6278, legislation introduced by Representative James Shannon of Massachusetts to suspend until December 31, 1982 the import duty on trimethylene glycol di-p-aminobenzoate, also referred to as TMAB.

I. USES AND DESCRIPTION OF TRIMETHYLENE GLYCOL DI-P-AMINOBENZOATE

TMAB is a safe, non-toxic, diamine curing agent which has been tested and found suitable for use by the cast urethane industry in the manufacture of a wide range of industrial, consumer and military products, ranging from roller skate wheels to nuclear weapons to the gears on heavy machinery to coatings on Polaroid Land camera parts.

TMAB was developed by Polaroid as a safe alternative for the known carcinogen, 4,4'-methylene bis (2-chloroaniline), commonly known as "MOCA". MOCA is currently in widespread use by the urethane industry throughout the United States—an industry composed primarily of small processors. MOCA is subject to regulatory standards of the states of Michigan and California, and will be subject to regulatory standards expected to be issued within several weeks by the Occupational Safety and Health Administration.

In fact, in 1973 OSHA did publish a standard setting a zero exposure limit for MOCA, which could have effectively banned its use. This standard, however, was overturned on procedural grounds in an appeals court. The court did uphold OSHA's responsibility to impose exposure limits in light of the scientific data on the carcinogenity of MOCA. California on its own adopted the OSHA exposure levels and many processors expect other states to follow suit. Michigan recently imposed a standard several times more restrictive than the California/OSHA standard.

TMAB is considered by industry sources to be the closest substitute for MOCA now available. E. I. Du Pont, the inventor and, until recently, the largest MOCA manufacturer in the world, evaluated TMAB and publicly assessed it as the only satisfactory MOCA replacement they had seen. In the process of manufacturing polyurethane products, MOCA (the curing agent) is combined with a urethane prepolymer to form an intermediary product, cast urethane elastomer. This is a liquid then cast by the processor into its final form. The prepolymer used with MOCA is derived from toluene diisocyanate (TDI). This combination is known as the TDI system.

An alternative cast elastomer system is MDI, employing methylene diisocyanate as the prepolymer with other curing agents. Although the MDI system results in a polyurethane product, it is not directly interchaneable with the end product of the TDI system. MDI polyurethanes display inherent inferior physical (strength) properties to TDI polyurethanes. They are also much more difficult to process and work with, and yield losses are significant in comparison with TDI polyurethanes. In addition, many processors are reluctant to change from the TDI to the MDI system because of the latter's increased need for process control.

The Chemical Abstract Number for trimethylene glycol di-p-aminobenzoate is 57609-64-0. Its trademark name is Polacure No. 740M, and is also known as 1,3-propanediol-di-para-aminobenzoate.

II. SOURCES OF PRODUCTION

A. *Trimethylene glycol di-p-aminobenzoate (TMAB).*—There are currently no commercial producers of TMAB in the United States. Polaroid developed it in test quantities only and does not have existing capacity or raw material

position to manufacture it commercially. TMAB is presently manufactured by only two companies in the world, both located in Europe. They are A.B. Bofors of Sweden and Dynamit Nobel A.G. of West Germany. Their activity with TMAB has been at Polaroid's request after Polaroid was unable to develop a domestic source.

In addition, availability of the two chemical raw materials is also limited. The two chemicals necessary for the production of TMAB are p-nitrobenzoic acid and trimethylene glycol (1,3-propanediol). Trimethylene glycol (1,3-propanediol) is manufactured in volume at only two companies in the world, both located in Europe. The p-nitrobenzoic acid is currently manufactured by three firms, one in Sweden, one in West Germany, and E.I. Du Pont Corporation in the United States. Du Pont has told Palaroid that its capacity for producing this acid is severely limited, and it will not be able to meet the long term volume requirements necessary for production of TMAB. Du Pont now buys some of its p-nitrobenzoic acid from the European manufacutrers to fill its own requirements.

As noted above, Polaroid does not have existing capacity or raw material position to manufacture TMAB in commercial quantities. Because the production of this chemical is inherently more expensive than that for MOCA and its future market is uncertain, the company has determined that investment in production facilities in the U.S. is not warranted at this time. Polaroid made an extensive search of American firms and was unable to find another U.S. chemical company which could undertake commercial production of TMAB at costs even competitively close to the quotations received from the European firms. Even Du Pont stated they could not make it economically due to lack of capacity and non-competitive costs on their captive production of the key raw material.

In order to meet and to develop a U.S. market demand for TMAB, Polaroid has decided to try initially to market this curing agent imported from one of the two European companies. For the commercial volumes needed during the first several years of market introduction, both Dynamit Nobel and A.B. Bofors have indicated they would use existing manufacturing capacity in West Germany and Sweden, respectively.

We now plan to begin marketing TMAB in the United States shortly. The initial volume of trade is anticipated to be 200,000 to 500,000 pounds of TMAB per year, with potential for increasing to 2 to 5 million pounds per year. The total potential market within the United States for the chemical is estimated at 8 to 10 million pounds per year in 1983, if the best manufacturing economics can be achieved in a dedicated, high volume plant.

The cast urethane industry needs a MOCA substitute due to carcinogenity of MOCA and due to cessation of MOCA manufacturing in the U.S., both by Du Pont and by Anderson Development Company in Michigan, closed down by order of the Michigan Department of Natural Resources. Several hundred processors have evaluated samples of TMAB and most have found it equal or superior to MOCA and have stated they would switch if supply is assured and if the economic penalty is not too severe. Some users are not cost sensitive and would be willing to pay a premium price within reason.

If demand in the United States provides sufficient to require greater manufacturing capacity, Dynamit Nobel and A.B. Bofors have both stated that they would be interested in expanding their plant facilities in the United States to carry out first the final manufacturing steps for TMAB, and eventually the initial manufacturing steps and the manufacture of the required raw materials.

This would result in expanded employment opportunities in the U.S., both in the construction and operation of the new facilities, directly creating an estimated 40 jobs, and indirectly an even greater number. In addition to providing the U.S. chemical industry with the capability to produce TMAB, the new facilities could also contribute to production in the U.S. of chemicals now economically available only from foreign sources.

B. *4,4' methylene bis (2-chloroaniline) (MOCA).*—There are now no domestic producers of MOCA. The E.I. Du Pont Corporation ceased production and sale of it in December of 1978. The last remaining domestic producer, Anderson Development Company of Adrian, Michigan, was shut down in mid-1979 under order of the Michigan Department of Natural Resources for violations of environmental laws directly associated with the production of MOCA.

Industry sources estimate that inventories of domestically-produced MOCA are depleted, and all quantities of this toxic curative agent now being sold in the United States are imported. Japan is the principal source for these imports.

Because it is a known carcinogen, industry analysts project that worldwide production of MOCA will eventually be drastically reduced, if not completely phased out. Major U.S. manufacturing firms, such as General Motors and Goodyear, have discontinued its use, turning instead primarily to inferior polyurethane products. There is considerable concern among polyurethane processors that a worldwide shortage of the curing agent could develop. This reinforces the need for quick passage of H.R. 6278.

III. COSTS OF PRODUCTION

Cost is the major factor that will determine the success of efforts to introduce TMAB in the U.S. market. This curing agent is inherently more expensive to manufacture than MOCA because raw material costs are approximately twice those for MOCA and the TMAB manufacturing process has three steps versus two for MOCA. This cost factor will be especially crucial during the introductory years until sufficient demand has been established to gain the manufacturing efficiencies of scale and permit the establishment of dedicated, high volume U.S. manufacturing facilities. As noted above, Polaroid has determined that the least expensive sources of TMAB at this time are the two European producers. They both have existing capacity to manufacture introductory commercial volume, and both are basic producers of the key raw material, p-nitrobenzoic acid.

A major additional component of the cost of this product imported into the United States is the tariff. Trimethylene glycol di-p-aminobenzoate is currently imported into the United States under TSUS Item No. 403.6065 at a column I rate of 12.5% ad valorem, plus 1.7 cents per pound. Under the revised chemical tariffs negotiated during the Multilateral Trade Negotiations, this chemical will, as of July 1, 1980, be imported under TSUS Item No. 405.09, at an increased rate of duty—15.6% ad valorem, plus 1.7 cents per pound. (It should be noted that this duty increase was not intentional. It results because TMAB, although produced only in test quantities in the U.S., was registered by Polaroid in compliance with the Toxic Substances Act and therefore included in a basket category of products manufactured in the United States subject to a higher rate.)

MOCA is currently selling in the U.S. at the rate of several million pounds per year at prices to users of about $3.00 per pound. The potential market for TMAB within the United States is in the range of 8 to 10 million pounds per year, providing competitive pricing could be eventually offered.

If the U.S. import duty is temporarily suspended, it is anticipated that TMAB can be introduced commercially at a price close to $6.00 per pound. If the duty suspension is not granted, initial pricing will definitely exceed $7.00 per pound (probably in the $7.25 to $7.50 per pound range), and it is doubtful that commercialization would proceed. In high volume and produced in a plant in the United States, a commercial price for the curing agent of under $5.00 per pound can be estimated.

Suspension of the duty would, therefore, encourage the use of this alternative to the known carcinogen, MOCA. It would also reduce the inflationary impact on processors who decided to purchase TMAB in place of MOCA.

IV. REVENUE EFFECT OF SUSPENSION OF DUTIES ON TRIMETHYLENE GLYCOL DI-P-AMINOBENZOATE

Because trimethylene glycol di-p aminobenzoate has not been imported in quantity in the past, there will be no immediate direct loss of revenue to the U.S. government as a result of the suspension of import duties.

V. SUMMARY OF ARGUMENTS FOR SUSPENSION OF DUTIES ON TRIMETHYLENE GLYCOL DI-P-AMINOBENZOATE

In conclusion, the Polaroid Corporation respectfully urges the Subcommittee to approve this legislation to suspend the duties on trimethylene glycol di-p-aminobenzoate until December 31, 1982, for the five reasons outlined below. The time frame should be sufficient to determine whether there is a viable market for this curing agent in the United States, ultimately leading to construction and operation of a manufacturing plant in the United States, both for the end chemical TMAB and for its key raw material, p-nitrobenzoic acid.

A. *It would facilitate introduction and use in the United States of the best available alternative for a known carcinogen, of which a shortage may be looming.*—TMAB is inherently more expensive to produce than the known carcinogen

MOCA, for which it is a direct substitute. TMAB is currently available on competitive terms from only two Europen firms, and the duty is a major factor in the cost of the curing agent. Consequently, this bill would help promote use in the U.S. cast urethane industry of a safe, non-toxic curing agent.

B. *It would reduce the inflationary effect on the cast urethane industry of substituting TMAB for MOCA.*—Chemical companies who choose to purchase the more expensive TMAB will incur increased costs, which would then be passed on to consumers. The duty suspension bill would help alleviate the impact of this increase.

C. *It would not injure U.S. producers or workers.*—Because there are no domestic producers of either TMAB or MOCA, neither chemical firms in the United States, nor their employees, would be harmed by the proposed suspension of duties. In fact, it would reduce exposure by many hundreds, and eventually thousands, of U.S. workers to a known carcinogen.

D. *It could lead both to the creation of jobs in the United States and to increased capability of the American chemical industry.*—If there proves to be a viable market in the United States for TMAB, both European producers have indicated they would definitely consider expanding their U.S. production facilities to meet the demand. This would create new jobs during both the construction and operation of the new facilities.

E. *It would have no immediate direct effect on revenues of the U.S. Government.*—Because TMAB is not now imported into the United States in any quantity, suspension of the import duty would not result in an immediate direct loss of revenue.

Again, I would like to thank you for this opportunity to present this testimony to the Committee and appreciate your consideration of H.R. 6278.

Mr. GIBBONS. As I recall, the administration supported your position anyway?

Mr. JULA. There was no objections.

Mr. GIBBONS. And do we have any objecting witnesses here today?

Mr. JULA. Well, sir, we hope to provide that objective view.

Mr. GIBBONS. All right, fine. It looks like you won my case at least with me. I can't speak for the rest of them but I think we can convince them. Thank you very much.

[The following was subsequently received for the record:]

POLAROID CORP.,
Cambridge, Mass., April 24, 1980.

HON. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN VANIK: This letter is an addition to the Polaroid Corporation's testimony before the Trade Subcommittee on March 17, 1980, on H.R. 6278, a bill to suspend the duty on trimethylene glycol di-p-aminobenzoate until the close of December 31, 1982. As you will recall, the bill was introduced by Congressman James D. Shannon and has the support of the Polaroid Corporation.

For the purposes of the markup scheduled for April 29, we understand that the International Trade Commission has proposed two technical amendments to H.R. 6278:

1. To change the name of the chemical as it would appear in the Tariff schedules of the United States from (under line 5, page 1): "Trimethylene glycol di-p-aminobenzoate" to "bis (4-aminobenzoate)-1, 3-propanediol, (trimethylene glycol di-p-amobenzoate)"

2. To change the TSUS number in the left hand column from: "405.08" to "907.05."

The Polaroid Corporation has no objection to these changes and also realizes, as the International Trade Commission report spells out, that there may be need for further revision of the bill when the chemical tariff classification change is made on July 1, 1980 to implement agreements reached in the Multilateral Trade Negotiations.

In addition, we understand that the Ways and Means Committee prefers that duty suspensions expire at the end of June of a given year. We, therefore, support an amndment during the committee markup changing the expiration date

in the bill from 12/31/82, as currently drafted, to 6/30/83. We strongly argue against changing the date to June 30, 1982, since it would provide an effective duty suspension period of well less than two years once the bill is finally enacted by Congress.

Thank you very much for your consideration of these matters. Best regards,

Sincerely,

SHELDON A. BUCKLER.

INTERNATIONAL BUSINESS-GOVERNMENT COUNSELLORS, INC.,
Washington, D.C., April 21, 1980.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: Enclosed are three additional letters that I request on behalf of the Polaroid Corporation, be placed in the hearing record on H.R. 6278, a bill to suspend the duty on trimethylene glycol di-p-aminobenzoate until December 31, 1982:

(1) A letter dated July 26, 1979 from Marvin T. Kuypers, Marketing Manager, Urethane Products, E. I. Du Pont de Nemours and Company, to Richard E. Brooks, Manager, Commercial Development, Polaroid Corporation;

(2) A letter dated March 12, 1980 from Hokan Cedarberg, Vice President, Marketing and Sales, Bofors Lakeway, Inc., to Dr. Sheldon A. Buckler, Senior Vice President, Polaroid Corporation;

(3) A letter dated July 24, 1979 from D. C. Morgenstern and Dr. Hoffmann, Director, Dynamit Nobel AG, to Dr. Sheldon A. Buckler, Senior Vice President, Polaroid Corporation.

I understand from members of the Trade Subcommittee staff that such materials should be sent to you by today, April 21.

Thank you very much,

Sincerely,

JANET HUNTER,
Government Relations Counsellor.

Enclosure.

E. I. DUPONT DE NEMOURS & CO., INC.,
ELASTOMER CHEMICALS DEPARTMENT,
Wilmington, Del., July 26, 1979.

Mr. RICHARD E. BROOKS,
Manager, Commercial Development, Polaroid Corp.,
Cambridge, Mass.

DEAR DICK: I understand from your letter of July 6, 1979 that you are proceeding to submit an application for duty suspension for TMAB (Polacure No. 740M) urethane curative. I feel this is a sound action since the price of 4,4' methylene bis (2 chloroaniline), the competition, is substantially lower than that projected for TMAB. As you know, we have studied the manufacturing economics of TMAB and found that due to market uncertainties, lack of available capacity and the need for substantial investment, it was not prudent to consider domestic manufacture of this material.

Since we terminated MOCA production in December of 1978, Anderson Development Company had been the only domestic manufacturer of 4,4' methylene bis (2 chloroaniline) until it was shut down by the State of Michigan Department of Natural Resources. Since Anderson is shut down, only foreign sources of this material remain. However, capacity is less than demand and I feel domestic urethane processors will feel this shortage during the third quarter.

Previously we have stated that TMAB comes as close to being a MOCA substitute as any material we have evaluated. Economics undoubtedly will be a major hurdle and any relief you can obtain which would minimize the inflationary impact of TMAB's pricing vs. 4,4' methylene bis (2 chloroaniline) would be most helpful in establishing a market for TMAB.

Sincerely yours,

MARVIN T. KUYPERS,
Marketing Manager, Urethane Products.

BOFORS LAKEWAY, INC.,
Muskegon, Mich., March 12, 1980.

Dr. SHELDON A. BUCKLER,
Senior Vice President, Polaroid Corp.,
Cambridge, Mass.

DEAR DR. BUCKLER: Pursuant to our discussions and past limited, trail production of Polacure curative for Polaroid, we wish to confirm our current situation and future plans to you.

Bofors Nobel Kemi, Karlskoga, Sweden, is the world leader in production of p-Nitrobenzoic acid (PNBA), the key raw material for Polacure curative. We have capacity in our Swedish plant to economically produce initial commercial volumes of Polacure curative, up to 220,000 lbs. per year, using PNBA transferred from our Swedish production at attractive economics. As you know, the second raw material, Trimethylene Glycol, is produced only in Europe by both Shell (U.K.) and Degussa AG in West Germany and is commercially available to us.

A.B. Bofors purchased Lakeway Chemicals, Inc., Muskegon, Michigan in October of 1977 for purposes of establishing U.S.A. production of chemicals previously made only in Sweden. This transfer of production is currently in progress and these plans include the future construction of an oxidation plant to produce PNBA in the U.S.A. to serve the U.S. market as well as export PNBA from the U.S. Should the volume of Polacure grow sufficiently during the next two years, our plan would be to also build a dedicated Polacure plant in Muskegon for an initial capacity of 1.5 million pounds per year using PNBA from the Muskegon plant mentioned above.

The best economics for Polacure in a volume situation would be achieved by the dedicated plants described above, both located in Muskegon. Initial commercialization, however, has the best economics using existing capacity and PNBA currently in Sweden.

We look forward to a continued cooperation on Polacure and an expanded business relationship with Polaroid in meeting Polaroid's chemical requirements.

Best regards,

HOKAN CEDERBERG,
Vice President, Marketing and Sales.

DYNAMIT NOBEL AKTIENGESELLSCHAFT,
July 24, 1979.

Re Polacure.

Dr. SHELDON A. BUCKLER,
Senior Vice President, Polaroid Corp.,
Cambridge, Mass.

DEAR DR. BUCKLER: Pursuant to the many discussions which have taken place between Polaroid and Dynamit Nobel with regard to your interest in having us produce "Polacure" for you, we would like to repeat and confirm our present and likely future situation.

As you know, we are a producer of one of the key raw materials for Polacure, para-nitro benzcic acid, and we can supply PNBA out of existing capacity at rather economical prices. Furthermore, we have developed our own european source of TMG, the second key raw material for polacure, on a commercially attractive basis.

As you know, we have in our west german plants existing capacity for an initial introductory production of TMAB (polacure) with favorable economics for a quantity of up to about 75,000 lbs per year. With moderate additional investments we believe that we can increase our capacity to a level of approx. 750,000 lbs per year.

In order to accomplish the best long-term economics, that is when the sales volume has reached the required magnitude of approx. 4–5 million pounds per year, we would be interested in investing in new, dedicated manufacturing facilities in the U.S. This production would most likely be done in our new plant site, in Mobile/Alabama via our associated company Kay-Fries, Inc., member Dynamit Nobel group. We would anticipate that this changeover would initially start with the final manufacturing steps and as justified by the economics of volume growth, would be expanded to include the initial manufacturing steps as well as the manufacturing of required raw material.

We are looking forward to continuing the fine cooperation and relationship between us and remain with

Best regards,

DR. HOFFMANN.
DR. MORGENSTERN.

Mr. GIBBONS. The next set of witnesses will be in connection with bill H.R. 6571 by Mr. Breaux. We have the United States Tuna Foundation and I guess we have the American Netting Manufacturers Organization. We will hear from the Tuna Foundation first.

STATEMENT OF JACK BOWLAND, REPRESENTING DAVID G. BURNEY, COUNSEL, THE UNITED STATES TUNA FOUNDATION; ACCOMPANIED BY MANUEL SILVA, CHAIRMAN OF THE BOARD, AMERICAN TUNA BOAT ASSOCIATION

Mr. BOWLAND. Mr. Chairman, I am Jack Bowland. I am with the United States Tuna Foundation. With your permission I would like to appear as a substitute witness for Mr. David Burney.

Mr. GIBBONS. Go right ahead. We will put your statement in the record.

Mr. BOWLAND. I am Jack Bowland and I am with the United States Tuna Foundation here in Washington, D.C. To my right accompanying me today is Capt. Manuel Silva, chairman of the board, American Tuna Boat Association, who is the managing owner of the tuna purse seiners *Proud Herritage* and *Seaquest*, and he will have a brandnew one delivered to him the first of May, the *Tradition*.

We are pleased to be here in support of H.R. 6571, a bill that would amend the Tariff Act of 1930 and this would extend the duty-free importation of tuna webbing from Panama. I would like to say Mr. Burney has provided the committee with a statement and I would like to see that included in the record if possible.

Mr. GIBBONS. Yes, sir.

Mr. BOWLAND. And I will make just one or two little presentations.

This bill just extends something that has been going on in the past, a duty-free status of our tuna webbing that we have been obtaining in Panama for the repair and building of nets. And it would only go through until December of 1981.

Panama of course has been a strategic location for the tuna industry due to its adjacency to the fishing grounds off the eastern tropical Pacific. And on top of that the only area or port that we can pick up netting that complies in quality and quantity to the netting that is required of the U.S. tuna fleet under the Mammal Protection Act. We have been working with domestic manufacturers and we hope that they will have webbing available by the end of 1981 is that this would no longer apply, this webbing, and we could get it here from our domestic manufacturers.

We are not trying to shortcut our domestic manufacturers. We spend considerable time working with them. And at the present time we have some panels of their webbing in one of the purse seine nets on the *Queen Mary*, which is a tuna purse seiner operating out of San Diego owned by Capt. Joe Madena. That would be about the summation of my oral presentation.

Captain Silva here can answer any technical questions and I will try to answer any questions that you want to pose to us on this particular problem.

Well, I would like to make one more comment. Since the transfer of the Canal Zone in October 1, 1979, the tuna industry has spent approximately $1.5 million in the purchase of webbing and construction of new netting. We also at this time have 22 new purse seiners that are either under construction or have been contacted for construction that will probably be delivered prior to the expiration date of H.R. 6571. And for that reason it is very critical with the nets costing anywhere from 250 to 280,000, this percent tax on top of it makes it very expensive for the tuna industry and it makes it very difficult also for us to compete with the other countries in the tuna fishery.

And with that I will terminate my oral statement.

[The prepared statement follows:]

STATEMENT OF DAVID G. BURNEY, COUNSEL, U.S. TUNA FOUNDATION

On behalf of the United States tuna industry, I welcome this opportunity to testify in support of HR 6571, a bill which would amend the Tariff Act of 1930 to continue the duty-free status of repair parts, materials, and equipments purchased and repairs made in Panama for vessels documented under the laws of the United States.

The United States Tuna Foundation was formed in May 1977, and its membership comprises all segments of the United States tuna industry. Memberships includes all tuna processors, tuna vessel owners and operators, and the labor force which works on board tuna vessels and in tuna processing facilities.

As background it is important to note that prior to October 1, 1979, vessels documented under United States law were permitted to purchase equipment and initiate repairs in the Panama Canal Zone without payment of the 50 percent duty imposed by the Tariff Act of 1930. As a result of passage of the Panama Canal implementation legislation on October 1, 1979, the duty-free status of the Canal Zone was terminated.

The Canal Zone is extremely important to the United States high seas tuna fleet because of its adjacency to the historical tuna fishing grounds located in the Eastern Tropical Pacific Ocean. Most tuna net installation and repair takes place in the Canal Zone since additional fuel costs for travel to ports located in the United States would be prohibitive. In addition, netting manufactured in the Canal Zone has been the only netting available which meets the requirements of the Marine Mammal Protection Act.

Recently representatives of the United States tuna industry met with representatives of the domestic net manufacturers in an effort to explain their concern over the transfer of the Canal Zone to Panama. Assurances were given by the domestic net manufacturers that they were capable of producing a purse seine net which would meet the NMPA specifications and be of comparable quality to netting presently utilized by the international tuna fleet. While expressing confidence in their ability to manufacture an acceptable purse seine net, the domestic net manufacturers admitted that some "at sea" testing was necessary. Representatives of the tuna industry agreed to place domestically produced webbing in U.S. tuna nets in order to compare the webbing with that presently being utilized.

As a result of the meetings between the tuna industry representatives and the domestic net manufacturers, the parties agreed that a 27 months continuance of the duty-free status of the Canal Zone would permit the domestic net manufacturers to "gear up" to meet the total needs of the United States tuna fleet. This was reached with full realization of the fact that to remain competitive in the international tuna fishery, the U.S. tuna fleet must be permitted to purchase netting in the Canal Zone without fear of a 50 percent tariff retribution. Since tuna nets cost upwards of $200 000, a 50 percent add-on would be substantial.

The United States tuna industry presently has 22 vessels under construction or contracted for construction. Because of the untimely transfer of the Canal

Zone, these vessels face the dubious distinction of having to pay a 50 percent tariff on the purchase of their nets. Many of these vessels contracted for the purchase of their webbing from the Canal Zone long before October 1, 1979. Something should be done to insure that these vessels are not penalized unnecessarily. It was certainly never the intent of those who supported transfer of the Panama Canal to penalize our last distant water fishing fleet.

It is the position of the United States tuna industry that until such time that the domestic net manufacturers can demonstrate an ability to produce netting of comparable quality to webbing now used by the international tuna fleet, and in addition be prepared to supply the total needs of the U.S. tuna fleet, the 50 percent duty should not be imposed. We are convinced that the domestic net manufacturers are making a genuine effort to produce acceptable webbing, and with proper time lag, will be in a position to supply the total needs of the United States tuna fleet. We therefore support a limited exemption from the Tariff Act of 1930.

After considerable discussion with representatives of domestic net manufacturers, we have agreed that HR 6571 should be amended to read as follows:

To amend the Tariff Act of 1930 by creating until December 31, 1981, a duty-free status for repair parts, materials, and equipments purchased in Panama for, and repairs made in Panama to, vessels documented under the laws of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) is amended by adding at the end thereof the following new subsection:

"(g) The duty imposed under subsection (a) shall not apply to the cost of repair parts, materials, and equipments (including fish nets and netting) purchased in Panama or to the cost of repairs made in Panama, during the period commencing October 1, 1979, and ending December 31, 1981".

We would appreciate anything you and your subcommittee can do to help expedite final passage of H.R. 6571, as amended. During the limited period of exemption from the Tariff Act of 1930, the United States tuna industry will continue to work closely with the domestic net manufacturers to insure that the quality and quantity of netting necessary to sustain the future of our last distant water fishing fleet will be available on January 1, 1982. Thank you for your consideration.

Mr. GIBBONS. Fine. I have no questions. I realize the problems that American fishermen have and the problems that they have encountered with net manufacturers. And I have also heard from the net manufacturers and I know what their problems are. I hope we can eventually develop a netting manufacturing industry in this country that would compete with that I think mainly of the Japanese, is that correct?

Mr. BOWLAND. That is correct, yes, sir.

Mr. GIBBONS. Well, were you in the room when the administration made some suggestions about changes earlier today?

Mr. BOWLAND. No, Mr. Chairman, I missed that.

Mr. GIBBONS. It says the administration opposed the bill as drafted but would support, if applied on a most-favored-nation basis rather than providing preferential treatment only for Panama. And if thc scope were narrowed to tuna seine netting, What is your reaction to this?

Mr. BOWLAND. Well, on the second portion I think that we have talked to our domestic net manufacturers and we could go along with having it limited to tuna seine netting only. As far as the most-favored nation I don't have the legal expertise to answer that question. I think possibly Mr. Inca from the domestic net manufacturers could probably address that question much better than I could.

Mr. SILVA. Mr. Chairman, I think that some of the historical values should take place or some consideration should be taken in that the

tuna fleet has been operating off of this area from Panama for many, many years. We also have a U.S. fleet that bases out of Puerto Rico. And consequently when they fill their vessels up they go through the Panama Canal, go to Puerto Rico, discharge fish, and come on back through the Panama Canal. So that particular area has been very important in the past.

We need time for those particular vessels for this new adjustment. And again I think it very important that many nets have been ordered. many nets have been ordered before this new change and many of these orders aren't completed yet.

Mr. GIBBONS. Well, certainly Panama makes a convenient spot to repair and place your nets being as strategically located as it is. And I know that fishermen have long preferred, at least some fishermen have, the Japanese nets over the domestic nets here. I guess the most-favored-nation treatment would mean that you could stop not only in Panama but you could stop in any of those other South and Central American countries and pick up your nets and repair your nets there.

You certainly won't have any objection to that?

Mr. SILVA. Well, the only areas that we know of that are set up for this type of thing is Panama. And the geographical location of Panama certainly——

Mr. GIBBONS. Since this is only a 2-year transition, at least everybody hopes it is only a 2-year transition and that the American net manufacturers will catch up in that 2-year period. I really don't see other than technical reasons for extending it to anybody but Panama. But maybe the administration doesn't want to get into a struggle with those other small countries in that area of the world over not extending them the same treatment they extend now to the independent country of Panama or to extend to Panama now that they got the whole country back and not just part of the country.

Well, thank you very much.

Let us hear next from the net manufacturers. I assume they are here.

Let's see, we have the American Netting Manufacturing Association, Mr. Steele and some other gentlemen. Would you each identify yourself and you may proceed as you wish. And your statements, if you have any, will be included in the record in full.

STATEMENT OF R. N. STEELE, SR., EXECUTIVE VICE PRESIDENT, NYLON NET CO., MEMPHIS, TENN., ON BEHALF OF THE AMERICAN NETTING MANUFACTURERS ASSOCIATION, ACCOMPANIED BY WILLIAM K. INCE, COUNSEL AND JOSEPH R. AMORE, VICE PRESIDENT, SALES AND MAKETING

Mr. STEELE. Thank you.

The gentleman on my right is Mr. Bill Ince of the law firm of Williams & King located here in Washington and he represents the American Netting Manufacturers Association. The gentleman on my left is Mr. Joseph Amore. He is our vice president of sales and Marketing. My name is Reginald Steele and I am the executive vice president for the Nylon Net Co., located in Memphis, Tenn. I am here on behalf of the American Netting Manufacturers Association, a group of manufacturers who produce approximately 95 percent of all fish net-

ting in the United States. As can be seen by the attached list, our members are scattered throughout the Nation. We are represented in Washington, D.C., by the law firm of Williams & King, and Mr. William Ince of that firm is with me today.

I want to thank you for his opportunity to testify with regard to H.R. 6571, a bill which would amend the Tariff Act of 1930 to temporarily "continue the present duty-free status of the cost of fish net and netting purchased and repaired in Panama." The purpose of this bill is to continue for a limited period of time an administrative loophole in the law imposing a duty on purchases of foreign goods and services by U.S. vessels in foreign countries.

This loophole has been taken advantage of by the U.S. tuna fleet which has for over 10 years been buying Japanese and Taiwanese fish netting in the Panama Canal Zone without paying any duty on such purchases when the vessels return to home port in the United States.

The loophole exists because U.S. Customs has, until recently, considered the Panama Canal Zone not to be a "foreign country" within the meaning of section 466 of the Tariff Act of 1930 (19 U.S.C. 1466), the law imposing a duty on foreign purchases by U.S. vessels. As a result of the loophole Japanese and Taiwanese fish netting distributors have set up shop in the Panama Canal Zone, and by this means they have over the last 10 years succeeded in capturing virtually the entire U.S. market for tuna netting.

As a result with the exception of a small amount of netting purchased for the inshore tuna fleet in southeastern California there has been no tuna netting produced by the American manufacturers. I might add that the textile quota arrangement which has been negotiated under the multifiber arrangement over the last several years has left completely untouched the trade in tuna netting through Panama because strictly speaking this netting is never imported into the United States.

Nevertheless the Panama tuna net sales represent a very large segment of the total fish netting consumed in this country, by our calculations valued as much as $4 million or fully 18 percent of the total fish netting market including tuna netting.

H.R. 6571 represents an effort on the part of U.S. netting manufacturers and the tuna fleet to arrive at some compromise whereby the loophole is allowed to remain open for a limited period of time until December 31, 1981, after which it is finally and irrevocably closed. However, we recognize since the domestic industry has not produced netting in any great extent over recent years because it had no share in the market we will require some leadtime to manufacture this netting in any great quantity.

During this period we seek to work closely with the U.S. tuna industry to develop and to produce netting of sufficient quantity and adequate quality to substantially supply the needs of the U.S. tuna fleet.

Since we have spent a great deal of time and effort in achieving this compromise it is with some concern that we understand that certain agencies in the administration are urging that the duty-free purchasing of net and netting will be made available to other countries besides the Republic of Panama. Such a change in the language of H.R. 6571 would open upon the floodgates for foreign manufacturers to wipe out not only the tuna netting that is produced in the United States but also other types of netting.

We have no doubt this would happen because of our prior experience with Japanese netting being sold from Mexico and Canadian ports to U.S. fishermen. For example, Ensenada, Mexico, is a west coast fishing port that had a major site for Japanese netting sales to the United States prior to our insistence U.S. Customs change its regulations to close that loophole.

If this limited exemption to section 466 were applied on a most-favored-nation basis, that loophole would immediately be open again. Two things would result: The one manufacturer of tuna netting who has been making tuna netting in Long Beach, Calif., would not be able to compete with low priced duty-free Japanese netting that would be made available to the tuna fleet just south of the border, and the tuna netting imports, which we calculate to be worth around $500,000 annually, through southeastern California ports, would cease since that business would go to the duty-free port of Ensenada, Mexico.

Not only tuna netting would be affected. If this bill were enacted on a most-favored-nation basis, Japanese shrimp nets could be purchased by shrimp vessels at ports in Mexico and South American countries convenient to the fishing grounds. As a consequence, U.S. shrimp netting production would seriously suffer.

Similarly, duty-free netting of Far Eastern manufacture would undoubtedly be made available on both the east coast and west coast of Canada, adversely affecting sales of U.S. netting in the Pacific Northwest and Atlantic fisheries. Canada has no tariff on imports of fish nets or netting and this would further encourage Japanese netting interests to set up shop there.

We have been asked by administrative agencies if the proposed legislation could be confined to tuna netting and tuna nets. Aside from the effects on the tuna net production noted above, we do not believe that this would be a solution to the problem. There is no way to adequately describe in technical or practical terms netting that is uniquely suitable for any particular fishery such as the tuna fishing.

The administration is concerned because the proposed legislation apparently violates the most-favored-nation—MFN—principle. We do not understand why the section 466 duty is even subject to MFN. The duty is not applied to imports, as in the case of a tariff, the usual context in which the MFN principle is involved. Nor is it a nontariff barrier to imports.

In any case, we believe the proposed legislation should be considered as a temporary and transitional solution to an unanticipated commercial result from the reversion of the Canal Zone to Panama. Surely the unique and limited nature of this legislation is no more than a technical violation, if that, of the MFN principle.

We do know that if the duty exemption is applied on an MFN basis, we would have to oppose it because it would destroy large segments of the U.S. industry.

I want to thank you, Mr. Chairman, for this opportunity.

[The prepared statement follows:]

STATEMENT OF R. N. STEELE, SR., ON BEHALF OF THE AMERICAN NETTING MANUFACTURERS ASSOCIATION

SUMMARY

1. I am testifying on behalf of the American Netting Manufacturers Organization, whose members produce approximately 95 percent of all U.S. fish netting.

2. We support H.R. 6571 as a reasonable compromise between the positions of the American netting industy and the U.S. tuna fleet.

3. Because of U.S. Customs' interpretation of the law (19 U.S.C. 1466) imposing a duty on foreign purchases by U.S. vessels, over the past ten years the U.S. tuna fishing vessels have been allowed to purchase foreign netting in the Panama Canal Zone, without paying any duty on such netting when they return to home port in the United States.

4. Far Eastern netting manufacturers have the advantages of lower labor rates and integrated production, and U.S. producers need a tariff in order to compete on an equal footing. Section 466 of the Tariff Act of 1930 is designed to prevent avoidance of the U.S. tariff structure on imports by assessing a 50 percent duty on purchases and repairs made by U.S. vessels in foreign countries. When the Canal Zone became part of the Republic of Panama on October 1, 1979, the legal loophole regarding foreign netting producers was closed.

5. The U.S. netting manufacturers have agreed to a compromise with the U.S. Tuna Foundation whereby the duty-free purchases of netting in Panama will be allowed for a limited period of time on the understanding that they will be forever ended after December 31, 1981. This period of time will allow the U.S. netting manufacturers to begin, and increase, their production of tuna netting so that they can adequately supply the requirements of the U.S. tuna industry. Accordingly, we support H.R. 6571 as written, because it embodies that compromise.

6. However, we view with great concern what we understand is the position of some Government agencies—that H.R. 6571 must be broadened to include purchases and repairs of nets and netting in other countries besides Panama. If this change is made, the U.S. netting industry stands to lose a tremendous amount of its market in all kinds of netting and nets. Suppliers of Far Eastern netting would undoubtedly set up shop in Mexico, Canada, and South American ports. What little tuna netting that is produced in the United States for the "in-shore" tuna fleet would disappear, and the market for U.S. shrimp netting production on the Gulf Coast would dry up. Similarly, netting sales to the Pacific Northwest and Atlantic fisheries would be seriously damaged by duty-free sales of foreign netting in Canadian ports. We question whether MFN should apply to this legislation, since the duty imposed by Section 466 is not on imports, per se. Even so, the situation that gives rise to this limited, narrow, exception to the Most-Favored-Nation (MFN) principle is unique and unparalleled. A hard-won compromise like that embodied in H.R. 6571 should not be destroyed in the name of MFN.

STATEMENT

I am here on behalf of the American Netting Manufacturers Organization, a group of manufacturers who produce approximately 95 percent of all fish netting in the United States. As can be seen by the attached list, our members are scattered throughout the nation. We are represented in Washington, D.C., by the law firm of Williams & King, and Mr. William Ince of that firm is with me today.

I want to thank you for this opportunity to testify with regard to H.R. 6571, a bill which would amend the Tariff Act of 1930 to temporarily "continue the present duty-free status of the cost of fish net and netting purchased and repaired in Panama." The purpose of this bill is to continue for a limited period of time an administrative loophole in the law imposing a duty on purchases of foreign goods and services by U.S. vessels in foreign countries. This loophole has been taken advantage of by the U.S. tuna fleet which has for over ten years been buying Japanese and Taiwanese fish netting in the Panama Canal Zone without paying any duty on such purchases when the vessels return to home port in the United States.

The loophole exists because U.S. Customs has, until recently, considered the Panama Canal Zone not to be a "foreign country" within the meaning of Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466), the law imposing a duty on foreign purchases by U.S. vessels. As a result of the loophole Japanese and Taiwanese fish netting distributors have set up shop in the Panama Canal Zone, and by this means they have over the last ten years succeeded in capturing virtually the entire U.S. market for tuna netting.

Far Eastern manufacturers of netting have several advantages over U.S. manufacturers, not the least of which are lower labor rates in a labor-intensive industry and integrated production that yields lower raw material costs than

ours. The U.S. tariff on imported fish netting has been roughly 45 percent ad valorem equivalent, and, because of the import sensitivity of this industry, was one of the few tariffs not reduced during the "Kennedy Round" of multilateral trade negotiations. We were unable to again hold out against duty reductions during this latest round of tariff negotiations and the duty is scheduled to be reduced to 17 percent ad valorem in 1989. However, the fact remains that for the time being at least, the tariff is helpful in offsetting the economic advantages enjoyed by Far Eastern manufacturers.

This has not been the case with trade in tuna netting which, because of the administrative loophole I have just mentioned, is effectively able to completely avoid any duty. As a result, with the exception of a small amount of netting produced for the inshore tuna fleet in Southern California, there has been no tuna netting produced by American manufacturers for the last ten years or more.

I might add that the textile quota agreements which have been negotiated under the Multifiber Arangement in the last several years have left completely untouched the trade in tuna netting through Panama because, strictly speaking, this netting is never actually imported into the United States. Nevertheless, the Panama tuna sales represent a very large segment of total fish netting consumed in this country—by our calculations valued at as much as $4 million or fully 18 percent of the total U.S. fish netting market, including tuna netting.

The intent of Section 466 was to prevent precisely what has been allowed to happen here, namely, an "end run" around the tariff structure of the United States. Nevertheless, it has been exceedingly difficult to convince U.S. Customs that its failure to recognize purchases in the Panama Canal Zone as subject to the law has frustrated Congressional intent.

After many years of discussion with Customs on this matter, the American netting manufacturers were given to believe that the loophole would be closed. A letter from Customs to Senator Maryon Allen on July 24, 1978, indicated that Customs was "considering changing its position in regard to the dutiability of vessel repairs and equipment purchases effected in the Panama Canal Zone to provide that such repairs and equipment purchases would be considered as having been made in a foreign country." This intention was never carried out. In the spring of 1979 Customs informed us that in view of the fact that the Panama Canal Zone would become a foreign country by any definition on October 1 of that year by operation of the Panama Canal Zone Treaty, Customs would not have to make a final decision since the issue would automaticaly be settled by the change in status of the Canal Zone when it was taken over by the Republic of Panama. October 1, 1979, has come and gone. Presumably Customs has been enforcing Section 466 with regard to vessel purchases in the Canal Zone since that date.

H.R. 6571 represents an effort on the part of U.S. netting manufacturers and the tuna fleet to arrive at some compromise whereby the loophole is allowed to remain in existence for a limited period of time (until December 31, 1981), after which it is finally and irrevocably closed.

We recognize that since the domestic industry has not produced tuna netting to any great extent in recent years because it had no share in the market, we will require some lead time to manufacture this type of netting in any great quantity. In addition, the tuna industry informs us that orders for new netting have already been entered with foreign manufacturers for 1980 and 1981. In view of these things we have reluctantly agreed with the U.S. tuna fleet on the language of H.R. 6571. While we believe that we will be able to supply a good portion of the tuna fleet's requirements for netting within a matter a months, after much negotiation we have agreed to a longer period on the understanding that there will be no extension of this period for any reason. During this two-year period we seek to work closely with the U.S. tuna industry to develop and produce netting in sufficient quantity and of adequate quality to substantially supply the needs of the U.S. tuna fleet. We will make our best efforts in this regard, and we earnestly hope that the U.S. tuna industry will also use its best efforts to the end that both industries can survive and prosper free of any foreign dependency.

Since we have spent a great deal of time and effort in achieving this compromise, embodied in H.R. 6571, it is with some concern that we understand certain agencies in the Administration are urging that the duty free purchases of nets and netting be made available in other countries besides the Republic of Panama. Such a change in the language of H.R. 6571 would open up the floodgates for foreign manufacturers to wipe out not only what little tuna netting is produced in the United States but also other types of netting. We have no doubt that

this would happen because of our prior experience with Japanese netting being sold from Mexican and Canadian ports to U.S. fishermen. For example, Ensenada, Mexico, is a West Coast fishing port that was a major site for Japanese netting sales to the U.S. tuna fleet prior to our insistence that U.S. Customs change its regulations to close that loophole. This limited exemption to Section 466 on an MFN basis would instantly open that loophole again. Two things would result: The one manufacturer of tuna netting left in the United States, in Long Beach, California, would have to immediately cease production of tuna netting because it would not be able to compete with low-priced duty free Japanese netting that would be made available to the tuna fleet just south of the border; and tuna netting imports (which we calculated to be worth around $500,000 annually) through Southern California ports would cease since that business would go to the duty free port to Ensenada, Mexico.

Not only tuna netting would be affected. Shrimp boats traditionally go to sea for a period of years before returning to home port, in the Gulf of Mexico. If this bill were enacted on an MFN basis, Japanese shrimp nets could be purchased by shrimp vessels at ports in Mexico and South American countries convenient to the fishing grounds. As a consequence, U.S. shrimp netting production would seriously suffer. Similarly, duty free netting of Far Eastern manufacture would undoubtedly be made available on both the East Coast and West Coast of Canada, adversely affecting sales of U.S. netting in the Pacific Northwest and Atlantic fisheries. Canada has no tariff on imports of fish nets or netting and this would further encourage Japanese netting interests to set up shop there.

We have been asked by Administrative agencies if the proposed legislation could be confined to tuna netting and tuna nets. Aside from the effects on tuna net production noted above, we do not believe that this would be a solution to the problem. There is no way to adequately describe in technical or practical terms netting that is uniquely suitable for any particular fishery, such as tuna fishing.

The Administration is concerned because the proposed legislation apparently violates the Most-Favored-Nation (MFN) principle. We do not understand why the Section 466 duty is even subject to MFN. The duty is not applied to imports, as in the case of a tariff, the usual context in which the MFN principle is involved. Nor is it a non-tariff barrier to imports.

In any case, we believe the proposed legislation should be considered as a temporary and transitional solution to an unanticipated commercial result from the reversion of the Canal Zone to Panama. Surely the unique and limited nature of this legislation is no more than a technical violation, if that, of the MFN principle.

We do know that if the duty exemption is applied on an MFN basis, we would have to oppose it because it would destroy large segments of the U.S. industry.

ANMO MEMBERS

Bayside Net and Twine Company, Inc.
P.O. Box 3160
Brownsville, TX 78520

Blue Mountain Corporation
Blue Mountain, AL 36201

The Brownell Net Company
Moodus, CT 06469

Carron Net Company, Inc.
1623 Seventeenth Street
Two Rivers, WI 54241

FABLOK Mills, Inc.
140 Spring Street
Murray Hill, NJ 07974

First Washington Net Factory, Inc.
P.O. Box 310
Blaine, WA 98230

FNT Industries
927 First Street
Menominee, MI 49858

Hagin Frith & Sons Company
Wyandotte Road
Willow Grove, PA 19090

Harbor Net and Twine Company, Inc.
1010 J Street
Hoquiam, WA 98550

Koring Brothers, Inc.
2050 West 16th Street
Long Beach, CA 90813

Mid Lakes Manufacturing Co.
3300 Rifle Range Road
Knoxville, TN 37918

Northwest Net & Twines, Inc.
1064 East Pole Road
Everson, WA 98247

Nylon Net Company
7 Vance Avenue
Memphis, TN 38101

ANMO ASSOCIATE MEMBERS

A. B. Carter Company
Carter Traveler Company
208 Hamilton Drive
West Point, GA 31833

Farrell-Calhoun, Inc.
400 North Front Street
Memphis, TN 38103

Flexabar Corporation
140 Walnut Street
Northvale, NJ 07647

Samson Ocean Systems
99 High Street
Boston, MA 02110

Mr. GIBBONS. Do others at the table wish to testify?

Mr. INCE. No, thank you. We are here to answer questions.

Mr. GIBBONS. Well, let me ask you why can't the U.S. netting industry compete with the Japanese?

Mr. STEELE. For one thing, Mr. Chairman, the difference in the cost of labor being the single largest handicap we have.

Mr. GIBBONS. How much is the difference in the cost of labor?

Mr. STEELE. The last time I was in Japan, which was in January of 1979 it was approximately $2 an hour in a plant that was actually manufacturing netting. They have in Japan today what they call the cottage industry and these are small, these are mom and pop operations throughout Japan. There might be as many as 300 to 500 of them, which they manufacture netting in their garages, after hours, the wife, the husband, the children in some cases and they collect this netting that they pay very little money for.

They take it to a processing plant and they process it. And of course the difference in what they pay for that netting to be manufactured and what we would have to pay for it here is the single biggest thing. The other handicap we have is the cost of the machinery. This industry is a very heavily capital intensive type of business and the machinery in 90 percent of the cases is purchased from Japan because they are the leader in netting machinery. There are no other companies in this country that manufacture knotting equipment as such.

Mr. GIBBONS. It has been a long time since I have seen a net made. I remember how they used to make them by hand. But I would imagine all of that is now a machine made product. And I just wondered why, you know, petroleum prices have been cheaper in this country than anyplace else except maybe, well, a few countries but certainly cheaper than the Japanese petroleum prices. And nylon is very petroleum intensive material and I was just wondering why we can't compete with the Japanese in this area?

Mr. STEELE. One of the other things that we are encountering, Mr. Chairman, is that it seems like there is some type of government subsidy in Japan with reference specifically to the netting industry seeing that the netting industry is a major industry within their country.

Mr. GIBBONS. We often get those allegations of government subsidy but we are always unable to come up with proof. And I realize the Japanese system is a little hard to trace but I am not sure it is that hard to trace. What makes you think there is a subsidy over there for netting?

Mr. STEELE. Well, it is my understanding in this last visit I made to Japan in January, in the area of filament pricing they have a subsidy where the government rebates to them x number of cents per pound for the pounds they buy within the country versus the pounds they ship out of the country. I know that at least two of the larger net

manufacturers in Japan are owned, the majority stock is owned by a filament company such as Toray and Toroba.

Mr. GIBBONS. Well, I would hope you all could eventually compete with the Japanese and we won't have to continue throwing up these very heavy tariffs, almost 50 percent of ad valorem or 48 percent.

Mr. AMORE. Well, Mr. Chairman, as you may be aware, of course these duties and tariffs have been renegotiated and are going to be declining over the next 5 years. And we are able to compete in some areas. I mean we are not, I mean they don't totally dominate it. But there are some nettings that we are able to compete in and some that we are not.

Mr. GIBBONS. We have had people from the fishing industry before this committee who have testified that the American nets are just not strong enough and wear out too fast and, you know, under the heavy ad valorem duty that we have on nets I worry about, you know, we have enough trouble—every time we throw up a high tariff to protect somebody in this country we penalize another businessman in this country who is trying to make a living competing with a different product on a different scale.

And I don't know what the problem is in your industry but I frankly am kind of running short of patience with how long it is going to take to catch up. I want to hear from you if you can tell me when do you expect to catch up and when are you going to get your prices in line?

Mr. AMORE. Mr. Chairman, if I may address part of that as to when are we going to catch up, specifically with the tuna industry due to the initial meeting we had with them some 7 or 8 months ago we feel that at this point we have developed a new product which we hope to be putting out to test within the next 60 days that will be far superior to the product they have been buying from Japan.

We feel very confident that today we can furnish a comparable product. I think what has happened 8 years ago, 10 years ago we were not able to. Consequently we lost that market and there was no dialog between the manufacturers and that market until very recently. The other point I would like to make to you is the point of Canada. Canada at one time had a very thriving manufacturing business. They have no duties on fish netting. Today they have virtually no production of fish netting and yet the fisherman in Canada pays virtually the same price for his fish net as the fisherman in the United States.

So I think that you can extract from that that tariffs or duties in themselves don't necessarily mean that taking them away will lower the cost to the end user.

Mr. GIBBONS. I would like to have a strong netting industry in this country. As you say, it is a capital-intensive type of industry. You mean you can't buy from an American manufacturer a netmaking machine and you got to go to the Japanese to buy them?

Mr. STEELE. There are no netmaking machine manufacturers, Mr. Chairman, in this country today. They were virtually put out of business by the Japanese during the early 1960's.

Mr. GIBBONS. Thank you very much for your testimony.

We will next hear testimony concerning H.R. 6673, Mr. Latta's bill on chestnuts and bamboo shoots, water chestnuts and bamboo shoots from Mr. J. J. McRobbie, who is the general manager of La Choy Food Products. I like your product.

STATEMENT OF J. J. McROBBIE, GENERAL MANAGER, LA CHOY FOOD PRODUCTS, ARCHBOLD, OHIO

Mr. McROBBIE. I am J. J. McRobbie, general manager for La Choy Food Products, Archbold, Ohio. I have brought with me today some samples of La Choy's products.

La Choy has submitted a prepared statement.

Mr. GIBBONS. It will be in the record.

Mr. McROBBIE. La Choy has worked very hard to build the water chestnut and bamboo shoot industry. As far as we know, we have no competition in this country. At La Choy our objective is to both protect the industry and help the consumer in the United States. If H.R. 6673 passes, it might be possible to pass on to the consumer a 5- to 7-cent-per can reduction.

Water chestnuts can be grown in the United States, but high labor costs prevent the formation of a domestic industry. Each chestnut must be hand peeled, and this process takes much labor.

We would like to include in this bill the suspension of duties on frozen products. The marketing staff at La Choy feels there is an improved quality difference in the frozen product.

Water chestnuts are unique; it is one of the few products on the American shelf that you can cook and process, and it will retain its own texture. Chestnuts do not become mushy when cooked, and therefore are the perfect addition to stuffings and beans. There is no substitute for this product.

Each year La Choy pays approximately $2 million in duty on both water chestnuts and bamboo shoots. Our aim at La Choy is to keep this industry alive. If we are given any break at all on the duty presently paid, we would hope to pass this savings onto the consumer through reduced prices.

Thank you for your consideration of this legislation. If you have any questions, I will be happy to answer them.

[The prepared statement follows:]

STATEMENT OF J. J. McROBBIE, GENERAL MANAGER, LA CHOY FOOD PRODUCTS, ARCHBOLD, OHIO

I am J. J. McRobbie, General Manager of La Choy Food Products of Archbald, Ohio, a division of Beatrice Foods Company. La Choy is the largest importer in this country of water chestnuts and bamboo shoots. We support the adoption of H.R. 6673 which is before you today with one or two minor amendments which I will discuss at the end of my statement.

Last year La Choy imported nearly $6 million in water chestnuts and bamboo shoots, primarily from Taiwan. This year we expect that figure to be higher and, in addition, we are importing products from the People's Republic of China. Though the duty on the product varies depending on the packaging and on the amount of preparation prior to shipment, it constitutes roughly fourteen and one-half percent of the price to La Choy. Needless to say, this duty is passed on to the consumer in the form of higher prices.

La Choy believes the duty should be suspended. As best we are able to determine, there is no domestic water chestnut or bamboo shoot industry to be protected.

Although the product could conceivably be grown in this country, the painstaking labor required to make it suitable for consumption has discouraged the creation of a domestic industry. In addition the Chinese cookbooks with which I am familiar caution against the use of substitutes. The Encyclopedia of Chinese Food and Cooking says flatly there are no substitutes. Time-Life Books Foods of the World confirms there are no substitutes for water chestnuts. It says that

kohlrabi or celery hearts would approximate the texture of bamboo shoots but not the flavor.

We are left then with a unique product, not produced in this country but subject to a rather stiff duty. We hope that this Committee and the Congress will join us in trying to reduce the price to the consumer of these products and of the chow mein and other Chinese dishes they become.

Congressman Latta's bill would suspend both the column 1 and the column 2 duties. Since La Choy imports only from Taiwan and the People's Republic of China, the suspension of column 2 duties is not necessary for our purposes.

We urge the Committee, however, to consider some minor additions to the bill. As drafted, the bill would suspend the duty on imports of water chestnuts and bamboo shoots which are packed in airtight containers—that is, canned. Although the largest percentage of our current imports are of canned product, we intend to import frozen products as well. These frozen products would currently be subject to a duty of 17.5 or 25 percent depending on whether they were sliced or whole. We hope these duties can also be suspended in order that our decision on what to import can be based on our judgment of the best method of preserving the quality of the product, rather than on the often hard to determine question of the amount of the duty.

We appreciate the Committee's consideration of this legislation and would be pleased to provide any assistance we can.

Mr. GIBBONS. Who is opposed to your bill?

Mr. MCROBBIE. Nobody that I am aware of.

Mr. GIBBONS. We got to fight inflation with some commonsense. It sounds good. I appreciate your bringing along these samples but I don't want to have to file any conflict of interest here.

Mr. MCROBBIE. I bring them only in the interest of education.

Mr. GIBBONS. Thank you very much for coming. We are glad to have you here.

Oh, yes, sir, excuse me, we have Mr. Myron Solter who is representing the Republic of China, Taiwan, Board of Foreign Trade, Ministry of Economic Affairs. Would you come forward.

I understand you want your picture taken. That is perfectly all right. The next man wants to have his picture taken. All right, go ahead, sir.

STATEMENT OF MYRON SOLTER AND DAVID SIMON, ON BEHALF OF THE BOARD OF FOREIGN TRADE OF THE REPUBLIC OF CHINA (TAIWAN)

Mr. SIMON. My name is David Simon. I am associated with Myron Solter.

Mr. GIBBONS. Oh, you are. We will put your statement in the record.

Mr. SIMON. Thank you very much.

I don't have an awful lot to add to what Mr. McRobbie said. There is no opposition to this bill as you know. These are major export products from Taiwan and the industry there is quite a substantial industry. The growth rate in the Taiwan export of both water chestnuts and bamboo shoots has been substantial for the past 5 years but the rate of growth into the United States has been much less than the rate of growth into the rest of the world. And we feel that this duty bill could alleviate that situation. In addition there is a good bit of data in the statement that we have submitted.

One piece of data that I just received this morning is the following: That American yield in water chestnuts at the time when the research into producing and peeling water chestnuts in the United States was at its peak, the best yield that was available in the United States was

10,000 pounds per acre. In Taiwan, the natural yield is 40,000 pounds per acre. I am informed that there is no research going on at this time on these products for commercial production in the United States.

I have nothing else to add really. My statement I think speaks for itself.

[The prepared statement follows:]

STATEMENT OF MYRON SOLTER AND DAVID SIMON, ON BEHALF OF THE BOARD OF FOREIGN TRADE OF THE REPUBLIC OF CHINA (TAIWAN)

This statement in support of H.R. 6673, providing for the temporary suspension of duties on water chestnuts and bamboo shoots for three years, is submitted on behalf of the Board of Foreign Trade of the Republic of China (Taiwan) by Myron Solter, Esquire and David Simon, Esquire, whose address is Suite 610, 1900 L Street, N.W., Washington, D. C. 20036. Messrs. Solter and Simon are duly registered as attorneys representing the Board of Foreign Trade, pursuant to 22 U.S.C. 612. The Board of Foreign Trade is an agency of the Ministry of Economic Affairs of the Republic of China (Taiwan).

This statement is summarized as follows:

1. The tariff treatment of water chestnuts and bamboo shoots is summarized.
2. The significance of these products vis-a-vis the agricultural economy of Taiwan is explained.
3. The non-existence of a domestic U. S. industry is established.
4. Support for the bill is reiterated.

It is the position of the Board of Foreign Trade that duties on water chestnuts and bamboo shoots should be temporarily suspended because there is no domestic industry that requires tariff protection; because the extension of duty-free treatment under the Generalized System of Preferences (GSP) to water chestnuts has been ineffective; and because the suspension of duties would provide the opportunity for price reductions in these commodities to ultimate consumers.

1. TARIFF TREATMENT OF WATER CHESTNUTS AND BAMBOO SHOOTS

Water chestnuts are currently classified under TSUS item 141.70 if packed in brine or pickled. The headnote to TSUS Schedule 8, Subpart C ("Vegetables, Packed in Salt, in Brine, Pickled, or Otherwise Prepared or Preserved") defines "in brine" as follows:

"[T]he term 'in brine' means provisionally preserved by packing in a preservative liquid solution such as water impregnated with salt or sulphur dioxide, but not specially prepared for immediate consumption."

In regard to their tariff history, the Tariff Commission Tariff Classification Study refers specifically to water chestnuts:

"Canned waterchestnuts have also been given a separate tariff status as item 141.70. Waterchestnuts make up the largest item of trade in the basket provision of paragraph 775 which has not otherwise been given separate tariff treatment in the revised schedules. Since trade is increasing and a domestic industry is being established, it is believed that separate treatment is justified." (U.S. Tariff Commission, Tariff Classification Study, Explanatory and Background Materials, Schedule 1, page 114 (1960).)

As will be explained below. the domestic industry never materialized, and there is now no commercial U.S. production of water chestnuts, nor is there likely to be such production during the three-year period of the proposed duty suspension.

The pre-MTN column 1 tariff rate for canned water chestnuts imported under TSUS item 141.70 was 17.5 percent ad valorem; the column 2 rate was (and remains) 35 percent ad valorem.

The staged duty reductions on item 141.70, effective on and after January 1 of each year, are as follows (44 Fed. Reg. 72347, 72445 (December 13, 1979)).

Year:	*Ad valorem duty* (*percent*)
1980	14.5
1981	11.3
1982	8.5
1983	7
1984	7
1985	7
1986	7
1987	7

Finally, water chestnuts entered under TSUS item 141.70 have received duty-free treatment under the Generalized System of Preferences since the implementation of GSP (see 40 Fed. Reg. 52275, 52279 (November 26, 1975)). Concomitantly, however, imports from Taiwan have, from 1976 to date, been denied duty-free treatment as a result of the competitive need limitations (id.). Because Taiwan supplies nearly all the water chestnuts imported by the United States, the extension of GSP on these articles has had little impact on U.S. imports.

While the GSP designation of water chestnuts has had little economic impact, it does establish that imports of these goods meet the legal requirements for duty-free treatment under the GSP. Hence the domestic industry is not import sensitive in the context of the GSP (in fact, there is no domestic industry; see infra), and the probable economic effect of duty-free treatment has been determined to be non-injurious pursuant to section 503 of the Trade Act of 1974.

Frozen water chestnuts, as distinguished from those packed in water, are imported under basket categories of the TSUS. If whole, frozen water chestnuts are imported under item 137.8482, the successor to item 137.8680 (44 Fed. Reg. 72347, 72358 (December 13, 1979)). If sliced, they are imported under item 138.4060, the successor to item 138.5060 (id.). These tariff items cover, respectively, whole and sliced "vegetables, fresh, chilled or frozen * * * other." There is no separate breakout for water chestnuts eo nomine.

The tariff categorization of bamboo shoots, unlike that of water chestnuts, was altered as a result of the MTN. Prior to January 1, 1980, these articles were imported under the basket provision of TSUS item 141.81 ("Vegetables (whether or not reduced in size), packed in salt, in brine or otherwise prepared or preserved * * * other"). The column 1 duty rate on those items was 17.5 percent ad valorem; the column 2 rate was 35 percent ad valorem.

As a result of the MTN, a new tariff category, TSUS item 141.78, was provided for "bamboo shoots in airtight containers." The column 2 rate remains at 35 percent, while the column 1 rates are staged as follows (44 Fed. Reg. 72347, 72445 (December 13, 1979)):

Effective date:	*Ad valorem duty (percent)*
1980	14.5
1981	11.5
1982	9
1983	9
1984	9
1985	9
1986	9
1987	9

These articles are not eligible for duty-free treatment under GSP nor has any petition been received requesting such treatment.

Frozen bamboo shoots, being a product that is sliced or otherwise reduced in size, are imported under basket category 138.4060, discussed supra.

Canned bamboo shoots were broken out in the tariff schedules as a result of the USDA policy to require a product-specific breakout when tariff concessions were sought by our trading partners on basket provisions during the multilateral trade negotiations.

2. SIGNIFICANCE OF EXPORTS VIS-A-VIS TAIWAN

Bamboo shoots and water chestnuts, with a venerable heritage of use in Chinese cooking, are significant agricultural products for Taiwan's food export sector. In 1978, canned water chestnuts comprised 3.04 percent of Taiwan's canned food exports by quantity and 2.02 percent by value.[1] At the same time, canned bamboo shoot exports constituted 19.57 percent of canned food exports by quantity and 7.32 percent by value. Bamboo shoots were the largest single canned food expert from Taiwan, by quantity, in 1978, in spite of relatively short pack season (from May through September).

The data in Table No. 1 indicate the magnitude of the relevant industries and their exports to the United States. Significantly, the growth rate of these exports to the United States has been lower than the growth rates of total exports of these

[1] Unless otherwise noted, data on Taiwan's water chestnut and bamboo shoot industries are obtained from Taiwan Canners Association, Taiwan Exports of Canned Food 1978 (1979).

articles. Thus, between 1975 and 1978, total exports of water chestnuts from Taiwan grew by 82.8 perce t, while U.S.-bound exports grew by 73.9 percent; these exports to the United States, moreover, suffered a 10 percent decline in 1979 versus 1978. Equally disturbing, total exports of bamboo shoots increased by 129.4 percent between 1974 and 1978, while U.S.-bound exports grew by only 35.5 percent.

TABLE 1.—TAIWAN'S EXPORTS OF BAMBOO SHOOTS AND WATER CHESTNUTS

[By quantity; thousands of standard cases]

	Total exports of—			U.S. exports of—	
	Canned foods	Water chestnuts	Bamboo shoots	Water chestnuts	Bamboo shoots
1975	14,319	372	1,909	348	467
1976	18,386	666	3,034	589	566
1977	19,025	872	3,543	733	790
1978	22,376	680	4,380	605	633
1979	NA	NA	NA	545	733

In view of these less-than-optimal growth rates in exports to the United States, we would urge that the proposed duty suspension, which would obviously benefit the Taiwan export industry, should be implemented—unless there are countervailing considerations such as protection of a U.S. industry to be considered. As will be shown below, there are no such countervailing considerations herein.

In regard to the role of these products in the U.S. market, it is possible to quantify U.S. imports of water chestnuts, but bamboo shoots were not broken out in the tariff schedules prior to January 1, 1980, and are therefore not quantifiable. In 1979, imports of water chestnuts from Taiwan constituted 89.5 percent of total water chestnut imports by quantity (21.2 out 23.7 million pounds) and 92.2 percent by value ($7.6 million out of $8.2 million). The next largest source, Mainland China, supplied 7.6 percent by quantity and 5.0 percent by value.

3. THERE IS NO DOMESTIC INDUSTRY

Following discussions with officials of the Department of Agriculture and knowledgeable sources in private industry, we are advised that there is no commercial domestic production of canned or frozen water chestnuts or bamboo shoots.

For some years during the 1960's and early 1970's, a domestic pack for those items was attempted. However, it proved impossible at the time to mechanize the peeling of the skin of the water chestnuts and the fibrous outer portion of the bamboo shoots, and the cost of labor for these operations made non-mechanized production prohibitively expensive in the United States.

Moreover, we are also informed that research into such mechanization has been discontinued. There is therefore no likelihood that a domestic industry will be created during the next three years, i.e., during the proposed duty-suspension period.

As a result, imports of these goods do not compete with any domestic production thereof. Moreover, imports do not compete with substitution products, simply because there is no adequate substitute for these highly specialized ingredients of Chinese cuisine.

4. CONCLUSION

In conclusion, the Board of Foreign Trade of Taiwan supports the enactment of H.R. 6673 providing for the temporary suspension of duties on water chestnuts and bamboo shoots for three years. It is submitted that there is no U.S. industry, either, extant or nascent, to be protected by the current tariff barrier and that there is therefore no reason to continue these duties, which increase the cost of goods without increasing their value.

Mr. GIBBONS. We will put your statement in the record and hope that all of this will help bring down the cost of living on water chestnuts and bamboo shoots.

Mr. SIMON. I hope so. They are delicious.

Mr. GIBBONS. Yes, sir. They certainly are good. I enjoy them. Thank you very much.

Now, Mr. Butterweck, we are glad to have you. Sorry to keep you waiting so long.

First, we have Mr. Schulze's statement to put in the record immediately ahead of your statement, and you may proceed.

[The following was submitted for the record:]

STATEMENT OF HON. RICHARD T. SCHULZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, thank you for this opportunity to express support of my bill, H.R. 5952, which will extend for two years the existing duty suspension on imported concentrate of poppy straw, which expires on June 30, 1980. As I will explain, the original reasons for the suspension in 1977 remain valid and justify the extension.

Poppy straw concentrate is a raw material used in the production of medicinal codeine and morphine. Its importation and processing into medicine is strictly regulated by the Justice Department.

The United States is totally dependent on imported concentrate and opium, another raw material, for the production of these medicines. There is no domestic production of either opium or concentrate. At the time of the original suspension, a worldwide opium shortage forced domestic producers to switch from that traditional raw material to concentrate. Although the opium shortage conditions have abated since 1977, concentrate is imported for use as an alternative raw material.

An important consideration supporting the original duty suspension was the possibility that duty cost savings by domestic processors could restrain otherwise necessary price increases. At least in part due to the supension, domestic processors of bulk codeine and morphine have been able to maintain or reduce the prices of their products.

Expeditious passage of this legislation would assure that the benefits of the present law will not be allowed to lapse. Without the continued suspension of the duty, the added costs of importation of the raw materials into the United States, essential to the manufacture of codeine and morphine, would ultimately be reflected in higher prices to the American public.

For the above reasons, Mr. Chairman, I respectively urge that this Subcommittee favorably act upon this legislation.

STATEMENT OF PAUL R. BUTTERWECK, DIRECTOR OF PRODUCTION MATERIALS PURCHASING, MERCK & CO., INC., ACCOMPANIED BY ROBERT T. BISSETT, COUNSEL

Mr. BUTTERWECK. Thank you for the opportunity to testify. I will be brief. A detailed statement has been submitted for the record.

My name is Paul Butterweck and I am director of production materials purchasing of Merck & Co., Inc., which has its headquarters in Rahway, N.J. I am accompanied by Mr. Robert Bisset, who is an attorney at Merck.

Merck is one of three registered bulk manufacturers of codeine and morphine and we will directly be affected by the passage of H.R. 5952 for we purchase concentrate of poppy straw as a raw material for these medicinal products which are considered by the medical profession as necessary drugs in the treatment of pain.

Merck urges extension of this duty suspension for an additional 2 years for the following reasons. First: In 1975, the Drug Enforcement Administration approved the importation of concentrate of poppy straw to supplement supplies of opium to revent a medical shortage

from developing. At this time we signed long-term contracts to insure supplies through 1981. The DEA has recently reviewed their original action and in the Federal Register, dated February 12, 1980, has set forth proposed rules permitting the continued purchase of this raw material.

Second: Supplies of concentrate of poppy straw are only available from abroad. There are no adequate facilities in the United States capable of producing this required supply. Accordingly, the present duty is not needed to protect American industry and the suspension will not impact on employment. The U.S. Department of Commerce concurs with this position.

Third: Suspension of the duty for an additional 2-year period would benefit the consuming public by holding down raw material costs which are inevitably reflected in the price of finished product at the consumer level.

Fourth: The duty on Indian opium, the only current source of this traditional raw material, was suspended at the start of 1976. Suspension of duty on concentrate of poppy straw, which also uses as its source the opium poppy plant, would merely provide it with an equal treatment under duty regulations.

I would like to conclude by adding that we suport also permanent elimination of duty as suggested by the Commerce Department this morning at the start of the hearing.

This, however, may take some time so I am going to urge that H.R. 5952 be passed because the present duty suspension bill runs out in 3½ months.

If there are any other questions that I can answer, I would be happy to do so. Thank you for the opportunity to testify.

[The prepared statement follows:]

STATEMENT OF PAUL R. BUTTERWECK, ON BEHALF OF MERCK & CO., INC.

SUMMARY

Merck & Co., Inc. urges passage of the continued extension of the suspension of duty on concentrate of poppy straw for the following reasons:

1. Merck purchases crude opium and concentrate of poppy straw as raw materials for use in the production of codeine and morphine, which the medical profession consider essential drugs in the treatment of pain. Concentrate of poppy straw was approved for importation on an emergency basis by the Drug Enforcement Administration to supplement this country's supply of crude opium and satisfy a 50 percent shortfall of U.S. requirements in 1973 because of a crop failure in India. DEA proposed Rule in the Federal Register for February 12, 1980, which would permit continued purchase of the raw material (45 F.R. 9289–9293, February 12, 1980).

2. Bulk manufacturers of these drugs have been forced to import this raw material from abroad because there are no adequate facilities in the U.S. capable of producing this material.

3. The present duty is not needed to protect American industry. The continuation of the present suspension, therefore, will have no adverse impact on domestic production or U.S. employment.

4. Suspension of this duty should benefit the consuming public by helping to hold down raw material processing costs, which are inevitably reflected in the price of finished products at the consumer level. This benefit should more than offset any revenue loss to the U.S. Government.

5. Reimposition of this duty serves only to penalize arbitrarily and unnecessarily the importation of an essential raw material and, therefore, is not consistent with other actions taken by our Government over the last few years encouraging the importation of this material to avoid a national medical emergency.

STATEMENT

My name is Paul Butterweck, I am the Director of Production Materials Purchasing of Merck & Co., Inc. I am accompanied by Robert T. Bissett, Esquire, who is an attorney at Merck & Co., Inc.

Merck, as one of the three authorized importers of crude opium and concentrate of poppy straw for bulk manufacture into codeine and morphine, will be directly affected by the passage of H.R. 5952.

The proposed bill would amend the appendix to the Tariff Schedules of the United States, 19 U.S.C. § 1202, by adjusting Item 907.70 to continue the present suspension for 2 years, until June 30, 1982, of the duty on concentrate of poppy straw, a raw material used in producing essential medical drugs.

This essential raw material must be obtained from foreign sources because of a lack of adequate production facilities in the United States capable of producing the required supply.

Concentrate of poppy straw is the crude extract of poppy straw containing the phenanthrine alkaloids of the poppy in either liquid, solid, or powder form. It is considered the most appropriate equivalent to imported crude opium.

Merck supports wholeheartedly this proposed extension, which would eliminate, for a limited period, the reimposition of an unnecessary penalty on the importation of a vital raw material needed to produce drugs essential to the continuation of an adequate level of medical care in this country.

Merck and the other U.S. bulk manufacturers of codeine and morphine have been importing concentrate of poppy straw as an additional raw material source of these essential drugs to supplement crude opium, the traditional raw material used in the production of these drugs.

Although there is currently enough crude opium available to satisfy current U.S. requirements, only a small crop failure in India could plunge us back into the critical short-fall posture of 1973.

U.S. companies have had no alternative but to import concentrate from various foreign sources in both Eastern and Western Europe, where the expertise and extra extraction capacity to process poppy straw to concentrate exists.

Bulk manufacturers of codeine and morphine in this country do not have adequate extraction facilities to process the volume of poppy straw necessary to supplement this country's supply of imported crude opium.

Duties on crude opium from India, which is now the only country, of the seven authorzied to grow opium for export, actually exporting such material at this time, were suspended at the start of 1976.

If Indian and Turkish poppy straw could be imported directly into the United States for processing into concentrate and did not have to be shipped to other countries for such processing, there would be no duty at all on the poppy straw itself from these countries as both India and Turkey are beneficiary developing nations.

This processing into concentrate in other countries, however, subjects the full value of the final processed product to the imposition of duty even though approximately 80 percent of the value of this end product is actually attributable to the underlying Indian or Turkish poppy straw.

This inequity could be avoided if U.S. companies possessed the capability which, unfortunately, they do not, to process poppy straw.

This proposed legislation, therefore, will have no adverse impact on domestic production of concentrate. Nor will it have any adverse effect on U.S. employment. It will merely continue the beneficial effects produced by the passage of H.R. 2982 (and its precursor, H.R. 3790) in 1977, which originally suspended the relevant duty.

Merck and the other two U.S. bulk manufacturers of codeine and morphine produce bulk drugs which are then sold to a large group of formulators who manufacture and sell at the consumer level a number of antitussive and analgesic end products containing these bulk drugs.

Merck agrees with the statement made by the State Department, in their letter of September 10, 1976, to the Committee on Ways and Means commenting on the "preliminary poppy straw duty suspension bill" introduced during the second session of the Ninety-fourth Congress by Congressman Schneebeli, H.R. 14140, namely, that removal of such an unnecessary cost on the acquisition of a needed raw material should certainly help to hold down the cost, and resulting price of the processed end product.

The benefit to the consuming public, including the Government, which itself is a consumer of these drugs, in helping to hold down unnecessary increases in price should more than offset the loss in duty revenue to the U.S. Government resulting from the passage of this extension legislation.

Natural codeine, morphine and their related derivatives have unique properties which make them superior to other drugs and the drugs of choice in many treatment situations.

Testimony before the Senate Human Resources Subcommittee on Health and Scientific Research during hearings on drug shortages in December 1974, before the Senate Judiciary Subcommittee on Juvenile Delinquency in March 1975 and March 1977, and at the Drug Enforcement Administration's hearings on the domestic cultivation of Papaver bracteatum; acknowledged the essential nature of these drugs to the delivery of adequate medical care in this country.

Codeine, the active ingredient in approximately 95 percent of all the end products derived from crude opium and concentrate of poppy straw, is used primarily in analgesics for the relief of pain and antitussives for the relief of cough.

The uniqueness of these drugs and their acknowledged essentiality to the medical profession has contributed to a steady growth in demand for them.

This steady growth in demand, combined with the uncertainty of raw supply, made it difficult in recent years for Merck and the other U.S. bulk manufacturers of codeine and morphine to obtain sufficient crude opium to meet U.S. medical needs.

By the way of background, imported crude opium has been the traditional and only raw material source of these drugs in the United States during the last 50 years or more.

Inventories dwindled and a critical situation would have developed had additional sources of supply to supplement this country's imports of crude opium not been found.

In the Federal Register announcement proposing the authorization of the importation of concentrate, the DEA stated the basis for its action as follows:

"In order to remedy the shortage of raw materials, the U.S. Government has taken and will continue to to take various steps, which may be spread over a period of time and coordinated to close the gap between the supply and demand for opium poppy derivatives without tilting the balance in the opposite direction. to crude opium.

"The first step was the release of stockpiled opium. The second measure is to supplement the imbalance with quantities of raw materials other than crude opium, and at the same time maintain control equal to the system now applicable to crude opium.

"The most appropriate equivalent of crude opium is concentrate of poppy straw. Accordingly, the Administrator has determined that beginning January 1, 1975 and until further notice, concentrate of poppy straw may be imported on the basis that an emergency exists in which raw materials for the production of opium poppy alkaloids are inadequate."

This legislation extending the suspension of the duty on concentrate of poppy straw is a further necessary step that Congress should take at this time.

Imposition of this duty is not consistent with other governmental actions taken over the last few years encouraging the importation of this raw material by U.S. companies to avoid a national medical emergency.

As noted, U.S. bulk manufacturers were forced to import concentrate of poppy straw, rather than simply poppy straw, because of the lack of adequate extraction facilities in this country to process concentrate from poppy straw.

In November, 1977, Congress amended the Tariff Schedule of the United States (TSUS) by adding thereto Item 907.70 (Concentrate of Poppy Straw) and suspending all duty thereon until June 30, 1980.[1]

The effect of that change in the TSUS provided an effective and direct means of insuring that the consumer price was not artificially raised by the imposition of a tariff on a product the supply of which was extremely small and completely produced outside the United States. The direct consequence of that duty suspension avoided the development of a national medical emergency in the United States.

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[1] (H.R. 2982, Public Law 95-161, 91 Stat. 1273, 95th Congress, 1st session, approved Nov. 8, 1977). (See 3 U.S. Code Cong. & Admin. News 3373 (1977) (H. Rept. No. 95-424, June 16, 1977; S. Rept. 95-420, Sept. 9, 1977).)

The wisdom of the House Committee on Ways and Means and the Senate Finance Committee in enacting the duty suspension on poppy straw concentrate continues in the availability of lower priced pain killing drugs derived from concentrate of poppy straw.

It appears that the continued suspension of that duty will permit the United States to utilize concentrate of poppy straw as a vital buffer stock for the production of pain relieving drugs. This would be of particular added utility to the Unted States because the avoidance of the national medical emergency in the United States in 1973 (accomplished through the previously mentioned federal stockpile release in response to an opium poppy crop failure in India) can be further insured by the continued use of poppy straw concentrate.

The use of long-term supply contracts by Merck and other U.S. producer companies, together with the continued suspension of the duty, will ensure continued dependable supplies of drugs utilizing concentrate of poppy straw at lower prices.

Without resorting to these outside foreign sources, a serious shortage of this raw material, so necessary to the production of essential medical drugs, would have occurred, and may again occur with an attendant serious impact on the level of medical care in the United States.

In summary Merck urges passage of this suspension legislation because there will be no adverse impact on any domestic industry. The reimposition of this duty serves only to penalize arbitrarily and unnecessarily the importation of an essential raw material, of necessity obtainable exclusively from foreign sources, and the absence of which might affect detrimentally the level of medical care in the United States.

I will be pleased to entertain and respond to any questions of the Subcommittee.

Mr. GIBBONS. Mr. Butterweck, we appreciate your waiting so long here. It is late in the day. You have answered the only question I had for you, but Mr. Schulze has a number of questions. Let me propound them to you.

From what countries are we now importing concentrate of poppy straw?

Mr. BUTTERWECK. At the present time we are getting concentrate of poppy straw from Holland and France. Several years ago, when there was a real critical shortage, we did get it from East Europe but we are no longer doing this. The present DEA regulations suggest that we confine purchases to the countries we are now using.

Mr. GIBBONS. Are there any problems with the diversion of raw materials?

Mr. BUTTERWECK. No. Concentrate of poppy straw comes in as opium under very strict security regulations and the shipments are received by Customs. They come to our vault by armed guards and we have been in business for 75 years and, fortunately, we have had no incidents.

Mr. GIBBONS. Mr. Schulze's third question is, why doesn't this country have adequate facilities to process poppy straw?

Mr. BUTTERWECK. Well, first of all there is a logistics problem. The straw is available in Europe. The capsules are very light and bulky and transportation is costly to this country. In addition, we looked at the possibilities of having our own facilities but the costs did not warrant spending the money in view of the fact that Europe has surplus capacity at the present time. We looked at using the facilities of people who extract soybeans but what we needed would have gone through their equipment in about 2 weeks and they didn't want to get exposed to a lot of security measures and extra costs; therefore, we purchased abroad.

Mr. GIBBONS. And Mr. Schulze's fourth and last question. Are there any synthetic substitutes for codeine and morphine products?

Mr. BUTTERWECK. I am not a doctor; however, the medical profession has preferred codeine. There has not been a good synthetic developed to date.

Mr. GIBBONS. Thank you, sir.

Mr. BUTTERWECK. Thank you for the opportunity to testify.

Mr. GIBBONS. All right, this concludes the hearings for today.

We will continue the hearings at a future date to be announced as soon as the subcommittee's schedule permits. At that time we will receive testimony from the public witnesses on H.R. 5961, H.R. 116, H.R. 5132, H.R. 5147, and H.R. 6349.

In the meantime, the record will remain open for written statements that witnesses wish to file.

Thank you very much.

[Whereupon, at 3:55 p.m. the hearing was adjourned.]

CERTAIN TARIFF AND TRADE BILLS AND ON THE PROTOCOL TO THE CUSTOMS VALUATION AGREEMENT

THURSDAY, APRIL 17, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met at 9:30 a.m. pursuant to notice, in room 210, Cannon House Building, Hon. Charles A. Vanik (chairman of the subcommittee) presiding.

Mr. GIBBONS. The subcommittee will come to order. This is the meeting of the Subcommittee on Trade of the Ways and Means Committee. This is the second in a series of hearings we have held on a set of miscellaneous bills. And in addition to receiving testimony from the executive branch and interested persons on the tariff and trade bills, the subcommittee today will also receive testimony and consult with officials of the Office of the U.S. Trade Representative and others on the customs valuation protocol and implementation of the protocol in U.S. law.

This consultation is required under section 102 of the Trade Act of 1974. Under the terms of the Trade Act the protocol must be approved and implemented by the Congress pursuant to the same provisions which applied to the Customs Valuation Agreement which was implemented by the Trade Agreements Act of 1979.

Today we will hear first from the executive branch agencies who will present the administration's positions on the bills not heard during our earlier hearing on March 17. Second, we will hear from witnesses and consult with the U.S. Trade Representative officials on the Customs Valuation Agreement protocol. Finally, we will hear from witnesses from the general public on the bills which were carried over from the earlier hearing as well as the new bills listed for the hearing today.

Due to the large number of bills, the number of witnesses and the little time available to the subcommittee, I must emphasize the necessity for the witnesses to summarize their statement—observing our 5-minute rule—in order to maximize the time for questions and discussion. Your complete statement will be printed in the hearing record.

At this time I will place in the record the press releases of the Subcommittee on Trade announcing the hearings.

[The press releases follow:]

[Press release No. 55]

CHAIRMAN CHARLES A. VANIK (DEMOCRAT, OHIO), SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES ANNOUNCES CONTINUATION OF PUBLIC HEARING ON CERTAIN TARIFF AND TRADE BILLS AND ON THE PROTOCOL TO THE CUSTOMS VALUATION AGREEMENT NOTIFIED TO THE CONGRESS ON JANUARY 21, 1980, THURSDAY, APRIL 17, 1980

The Honorable Charles A. Vanik (D., Ohio), Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade will complete its public hearing on Thursday, April 17, 1980, on certain tariff and trade bills and on the Protocol to the Customs Valuation Agreement notified by the President to the Congress on January 21, 1980. The first day of the hearing was held on March 17, 1980, as announced on March 4 (Press Release No. 52).

The hearing on April 17 will be held in Room 334 Cannon House Office Building at 10:00 A.M.

At the end of this release is a list of the tariff and trade bills on which testimony will be received. In addition, the Subcommittee will receive testimony on the Protocol to the Agreement on Customs Valuation which was concluded in the Multilateral Trade Negotiations (MTN) and approved and implemented by the Congress in the Trade Agreements Act of 1979.

PROTOCOL TO CUSTOMS VALUATION AGREEMENT

Under section 102 of the Trade Act of 1974, the President has negotiated a Protocol amending the Customs Valuation Agreement. The Protocol must be approved and implemented by the Congress pursuant to the same provisions of the Trade Act which applied to the Customs Valuation Agreement, including at least 90 calendar days' advance notice to the Congress (submitted Jan. 21, 1980) of the President's intention to sign the Protocol and submission of an unamendable implement bill. The April 17 hearing will fulfill the purpose of the 90-day notice of permitting consultations between the Congress and the President on the terms of the Protocol and its implementation in domestic law. After submission of the implementing bill, the Congress has 90 working days to approve or disapprove it.

The Protocol would make one amendment to the Customs Valuation Agreement and contains some common understandings and some acknowledgments of possible reservations to be taken by developing countries.

The amendment made by the Protocol requires the deletion of the third-party test for related party transactions now contained in Article 1.2(b)(iv) of the Agreement. Accordingly, related parties would no longer use the price of identical goods from third countries as a means to justify their own transaction values.

Common understandings contained in the Protocol essentially restate certain provisions of the Customs Valuation Agreement. There is acknowledgment that certain developing countries have expressed concern that there may be problems in the application of transaction value insofar as it relates to importations into their countries by sole agents, sole distributors, and sole concessionaires, and therefore it is agreed that if such problems arise in practice, a study of this question would be made. Parties to the Protocol also agree that Customs administrators may need to make inquiries concerning the truth or accuracy of any statement, document, or declaration presented to them for customs valuations purposes, and that they have a right to expect the full cooperation of importers in these inquiries. The final common understanding is that the price actually paid or payable under transaction value includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

The Protocol also covers reservations which may be made by developing countries upon signature to the Agreement. These include reservations permitting: A request for an extension of the five-year period for delay in application of the provisions of the Agreement by developing countries, with the parties to the Agreement giving sympathetic consideration to such a request in cases where the developing country can show good cause; a retention of officially established minimum values on a limited and transitional basis subject to agreement of parties to the Agreement; a limitation by a developing country of the right of the importer to choose between constructive and deductive methods of valuation under Article 4 of the Agreement to those situations where the Customs

authorities in the developing country agree to the choice; and the application by a developing country of the deductive method of Article 5.2 of the Agreement whether or not the importer requests the application of such method.

PROCEDURES TO TESTIFY

Officials from interested Executive branch agencies will be the first witnesses to testify on bills not included in the first day of the hearing and on the Protocol to the Customs Valuation Agreement. Testimony will be received by the Subcommittee from the interested public following the appearances of the Executive branch witnesses.

In order to maximize time for questions and discussions, witnesses will be asked to summarize their statements. The full statement will be included in the printed record. Also, in lieu of a personal appearance, any interested person or organization may file a written statement for inclusion in the printed record.

Requests to be heard must be received by the Committee by the close of business, Tuesday, April 15. The request should be addressed to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515; telephone (202) 225-3625. Persons who asked prior to March 17 to testify need not submit an additional request. Notification to those scheduled to appear and testify will be made by telephone as soon as possible.

In this instance, it is requested that persons scheduled to appear and testify submit 30 copies of their prepared statements to the Committee office, Room 1102 Longworth House Office Building, by the close of business, Wednesday, April 16.

Persons submitting a written statement in lieu of a personal appearance should submit at least three (3) copies of their statement by the close of business, Monday, April 21, 1980. If those filing statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may submit 50 additional copies for this purpose if provided to the Committee during the course of the public hearing.

Each statement to be presented to the Subcommittee or any written statement submitted for the record must contain the following information:

1. The name, full address, and capacity in which the witness will appear.
2. The list of persons or organizations the witness represents, and in the case of associations and organizations, their address or addresses, their total membership, and where possible, a membership list.
3. The bill or bills on which the witness will be testifying and whether the testimony will be in support or opposition to it; and
4. A topical outline or summary of the comments and recommendations in the full statement.

TARIFF AND TRADE BILLS

H.R. 116 (Mr. Bafalis)—To amend section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

H.R. 4248 (Mr. Heftel)—To amend section 8e of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to provide when papayas produced in the U.S. are made subject to any regulation with respect to grade, size, quality or maturity, imported papayas shall be made subject to the same regulation.

H.R. 5065 (Mr. Lederer)—For the relief of the Chinese Cultural and Community Center of Philadelphia (duty-free entry of ceramic roofing tiles).

H.R. 5147 (Mr. Vanik)—To provide a separate classification for parts used for the manufacture or repair of certain pistols and revolvers used for nonsporting purposes.

H.R. 5827 (Mr. Vanik by request)—To amend the Act of June 18, 1934 regarding the submission by the Foreign Trade Zones Board of annual reports to Congress.

H.R. 6453 (Mr. Vanik)—To amend the Tariff Schedules of the U.S. regarding the rate of duty that may be proclaimed by the President on sugar imports.

H.R. 5961 (Mr. LaFalce plus cosponsors)—To amend the Currency and Foreign Transactions Reporting Act to (1) make it illegal to attempt to export or import large amounts of currency without filing required reports; (2) allow U.S.

Customs officials to search for currency in the course of their search for contraband articles; (3) allow payment of compensation to informers.

H.R. 6394 (S. 1654) (Mr. Rodino)—To clarify and revise certain provisions of 28 U.S.C. on judiciary and judicial review of international trade matters ("Customs Court Act of 1980").

H.R. 5442 (Mr. Weaver)—Providing for the conveyance of certain amphibious landing craft to the Coos County Sheriff's Office, Coos County, Oregon.

H.R. 6975 (Mr. Ford of Tenn.)—To eliminate the duty on hardwood veneers.

H.R. 5452 (Mr. Stanton)—To permit products of U.S. origin to be reimported into the U.S. under informal customs' entry procedures.

[Press release No. 59, Apr. 23, 1980]

CHAIRMAN CHARLES A. VANIK (DEMOCRAT, OHIO), SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON THE OPERATION OF THE GENERALIZED SYSTEM OF PREFERENCES AND ON CERTAIN TARIFF BILLS, THURSDAY, MAY 8, 1980

Congressman Charles A. Vanik, Chairman of the Subcommittee on Trade, Committee on Ways and Means today announced that the Subcommittee will hold a hearing on Thursday, May 8 on the operation of the Generalized System of Preferences (GSP) authorized under Title V of the Trade Act of 1974 to provide duty-free entry of imports of eligible articles from beneficiary developing countries designated by the President. The hearing will be based primarily on the report submitted by the President to the Congress on April 17 reviewing the operation of the GSP program during its first five years as required under section 505 of the Trade Act, in particular recommendations called for under section 1111 of the Trade Agreements Act of 1979 to promote "graduation" of more advanced developing countries from the program and greater benefit distribution to less competitive industries and less advanced developing countries.

In addition, the Subcommittee will receive testimony on the following six tariff bills:

H.R. 7047 (Mr. Hollenbeck)—To suspend the duty on certain flat knitting machines until January 1, 1984.

H.R. 7054 (Mr. Pickle)—To amend the Tariff Schedules of the United States to make the duty on plastic netting approximately equal to the duty now charged on the raw plastic from which netting is made (10 percent ad valorem plus 1.5 cents per pound).

H.R. 7063 (Mr. Won Pat)—To amend the Tariff Act of 1930 to increase the dollar value of merchandise eligible for informal entry.

H.R. 7087 (Mr. Frenzel)—To increase the column 2 rate of duty on anhydrous ammonia as of January 1, 1982.

H.R. 7145 (Mr. Jenkins)—To extend the temporary reduction in the column 1 (MFN) rate of duty on levulose until December 31, 1981.

H.R. 7139 (Mr. Cotter)—To suspend the column 1 rates of duty on cigar wrapper tobacco for a one-year period.

The hearing will begin at 10:00 a.m. in Room 334 Cannon H.O.B.

Officials from interested Executive branch agencies will testify first followed by testimony from the interested public. In order to maximize time for questioning and discussion, witnesses will be asked to summarize their statements. The full statement will be printed in the hearing record. Also, in lieu of a personal appearance, any interested person or organization may file a written statement for inclusion in the printed record.

Requests to be heard must be received by the Committee by the close of business Monday, May 5. The request should be addressed to John M. Martin, Jr. Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth H.O.B., Washington, D.C. 20515; telephone (202) 225-3625. Notification to those scheduled to testify will be made by telephone as soon as possible.

In this instance, it is requested that persons scheduled to appear and testify submit 30 copies of their prepared statements to the Committee Office, Room 1102 Longworth House Office Building, by the close of business, Wednesday, May 7.

Persons submitting a written statement in lieu of a personal appearance should submit at least three (3) copies of their statement by the close of business Friday, May 16. If those filing statements for the record of the printed hearing wish

to have their statements distributed to the press and the interested public, they may submit 50 additional copies for this purpose if provided to the Committee during the course of the public hearing.

Each statement presented to the Subcommittee or any written statement submitted for the record must contain the following information:

1. The name, full address, and capacity in which the witness will appear;
2. The list of persons or organizations the witness represents, and in the case of associations and organizations their address or addresses, their total membership, and where possible, a membership list;
3. The bill or bills on which the witness will be testifying and whether the testimony will be in support or opposition to it; and
4. A topical outline or summary of the comments and recommendations in the full statement.

Mr. GIBBONS. Mr. William Cavitt of the Commerce Department and others from the administration, will you please come forward and proceed with the presentation of the administration's position on the bills before us today. I understand that Mr. Cavitt will present the administration's position on H.R. 6269, H.R. 6975, and H.R. 7004.

Mr. Rettinger, of the Customs Service Chief Counsel's office will follow with testimony on H.R. 5442 and H.R. 5452.

Mr. Hathaway, Assistant General Counsel of the U.S. Trade Representative will conclude for the administration with testimony on the customs valuation agreement amendment.

Gentlemen, please proceed.

STATEMENT OF WILLIAM CAVITT, DIRECTOR, IMPORT POLICY DIVISION, DEPARTMENT OF COMMERCE

Mr. CAVITT. Thank you, Mr. Chairman. My name is William Cavitt. I am Director of the Import Policy Division at the Department of Commerce.

The first bill which I am testifying about this morning on behalf of the administration is H.R. 6269, to extend the temporary duty suspension on doxorubicin hydrochloride until the close of June 30, 1982.

Mr. Chairman, the administration supports the enactment of this bill. Doxorubicin hydrochloride, which is sold under the brand name of Adrianmycin, is not produced in the United States. The drug is manufactured exclusively in Milan, Italy, by a firm called Farmitalia whose patent on the drug prohibits its production by any other manufacturer.

At this time there are no domestically manufactured products commercially available which compete with doxorubicin hydrochloride. Other products which may become competitive with this drug are being tested, but they are not yet being distributed at the commercial level.

The extension of the duty suspension on doxorubicin hydrochloride would provide continued duty-free status for imports of an already expensive drug. The U.S. distributor of this drug estimates at the retail level, a 50-milligram vial of the product sells for between $75 and $150.

The next bill on which I will testify is H.R. 6975 to eliminate the duty on hardwood veneers. Again, Mr. Chairman, the administration supports the enactment of this bill. Most of the veneers in question are no longer competitive with the domestically produced items and

elimination of the duties on these products will help domestic producers.

By way of background, briefly, during the course of the multilateral trade negotiations and as a part of the industry consultations programs, Mr. Chairman, the Industry Sector Advisory Committee No. 3 requested that one of our negotiating goals be to achieve duty-free entry for all veneers, both hardwood and softwood. In the course of those negotiations we were successful in negotiating duty-free entry for those items where the duty was 5 percent or less. On two items, however, where the duties were 8 and 10 percent, respectively, we did not have the authority to go to duty free. However, we did negotiate maximum duty cuts.

The bill as proposed here, which was one the administration had pledged that we would try to have introduced, was subsequently introduced by the industry and is one with which we are fully in accord.

Mr. VANIK. Would you tell us the revenue impact?

Mr. CAVITT. I am sorry, but we don't have the revenue impact on that. However, we will submit it to you later for the record.

[The following was subsequently received:]

ESTIMATED REVENUE IMPACT OF H.R. 6975, TO ELIMINATE THE DUTY ON HARDWOOD VENEERS

TSUS No.	1979 trade	1979 duty	Projected 1980 duty[1]	Projected 1981 duty
240.0020	$44,171,960	$1,766,221	$441,719	Free
240.0040	3,397,692	135,572	33,976	Free
240.0200	22,689,248	2,098,653	1,588,247	$907,570
240.0320	28,284,842	860,653	565,696	Free
240.0340	18,764,229	899,720	375,284	Free
240.0420	381,782	24,046	19,089	12,217
240.0440	1,553	124	77	50
240.0620	240,114	12,005	4,802	Free
240.0640	27,009	1,350	540	Free
Total	117,958,429	5,798,344	3,029,430	919,837

[1] Projection based on 1979 volume of trade and rate of duty currently scheduled to be in effect for each of the years.

Source: IM 146 U.S. Imports for Consumption.
Prepared by: Import Policy Division, Office of Trade Policy, International Trade Administration, Department of Commerce, Apr. 25, 1980.

Mr. VANIK. Is there any revenue impact on the preceding bill?

Mr. CAVITT. It has been previously duty-suspended, Mr. Chairman. There haven't been any duties collected on it.

Mr. VANIK. Thank you. Go to H.R. 7004.

Mr. CAVITT. Yes, sir, Mr. Chairman. On H.R. 7004, a bill to permit until July 1, 1982, the duty-free entry of Tricot and Raschel warp knitting machines, the administration supports the enactment of this bill. Domestic production of Tricot and Raschel warp knitting machines is negligible. The proposed duty suspension would not adversely affect U.S. textile machinery producers. Indeed, the bill would provide cost savings to domestic textile manufacturers who are dependent upon these imported machines. This would help to make certain U.S. textile products more competitive in domestic and foreign markets.

Mr. VANIK. All right. Any questions? You may proceed to H.R. 5452.

Mr. CAVITT. I believe we have a witness from Customs to handle that bill, Mr. Chairman.

Mr. VANIK. Mr. Rettinger, we would be happy to hear from you on this bill.

STATEMENT OF ARTHUR RETTINGER, OFFICE OF THE CHIEF COUNSEL, U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

Mr. RETTINGER. H.R. 5452 if implemented would permit the informal entry of merchandise of U.S. origin when the aggregate value of the shipment does not exceed $10,000 and the merchandise is imported for the purposes of repair or modification prior to reexportation.

The Customs Service does not foresee any administrative difficulties in administering this provision if enacted into law.

The bill appears to be intended to facilitate American businesses, and in particular small businesses by permitting machinery sold by them to foreign countries to be returned for repair without the necessity of formal customs entry requirements.

The effect of the bill would relieve in most instances the importer of record from the formal entry of merchandise, including the posting of an entry bond for the merchandise involved.

Most of the merchandise involved would be classified as American goods returned, and would be entitled to duty-free entry under item 800 of the Tariff Schedules.

If the article involved was advanced in value or improved in condition while abroad, duty would be assessed on the basis of the improvement made to the article if in compliance with the requirements of item 806.20 TSUS and section 10.8 of the Customs Regulations.

Mr. VANIK. Thank you very much. Any questions?

The Chair hears none. Go right on to H.R. 5442, concerning the conveyance of certain amphibious landing craft.

Mr. RETTINGER. The bill if enacted would provide for the conveyance of certain amphibious landing craft to the Coos County Sheriff's Office in Coos County, Oreg. The landing craft were seized on December 31, 1977, as a result of the interception of a marihuana smuggling operation near Brandon, Oreg. The seizure was the result of the joint efforts of the U.S. Customs Service, the U.S. Coast Guard, the Drug Enforcement Administration, the Coos County Sheriff's Office, and the Perry County Sheriff's Office, the Coos Bay Police Department, and the Brandon Police Department.

The initial raid resulted in the seizure of a large amount of marihuana Thai sticks, three surplus U.S. Army amphibious LARC vehicles and several other vehicles and equipment. Since the seizure of the LARC's storage costs of approximately $8,000 have been incurred by the U.S. Customs Service.

The Customs Service has no need for this type of conveyance, and we do not believe that the sale of the LARC's at auction would bring a price sufficient to cover the storage costs. However, the Coos County Sheriff's Office is willing to pay the storage costs in return for transfer of the craft. Conveyance would be subject to payment by the sheriff's office of storage and related expenses and would be subject to final judicial forfeiture of the landing craft, which are currently in court proceedings.

Mr. VANIK. Well, that bypasses the normal procedure for disposition, doesn't it?

Mr. RETTINGER. Yes; it does. Normal procedure for disposition would be after forfeiture Customs would get first crack at the vehicles if we needed them. If not, GSA would request other Federal agencies for their opinion as to whether the craft would be needed. In this case the vehicles have already passed GSA's clearance procedure and no Federal agency had a need for them.

Mr. VANIK. How long was the craft in storage?

Mr. RETTINGER. Right now it has been over 2 years.

Mr. VANIK. And how long is it? How big a boat is it?

Mr. RETTINGER. I don't know exactly.

Mr. VANIK. Any idea? An amphibious craft is anywhere from 36 to 40 feet to something bigger.

Mr. RETTINGER. I presume they are pretty big. We understand the Coos County sheriff intends to use them for rescue and law enforcement work.

Mr. VANIK. They could have stored that in the Potomac River basin. It would have been cheaper.

Mr. RETTINGER. The transportation would not.

Mr. VANIK. I know that. It still sounds like a heavy charge.

I see no problem with this. Are there any questions on the part of the members of the committee?

Mr. GIBBONS. Let me ask another question.

Mr. VANIK. Mr. Gibbons.

Mr. GIBBONS. We have something in my congressional district down in Tampa, Fla., that we call the marihuana fleet. It is a series of boats that have been captured and sometimes recaptured by Federal and all kinds of law enforcement agencies operating in that area. Do you have any trouble disposing of these vehicles, these boats? I say vehicles because they also have airplanes. Somebody got a DC–7 the other day—a small four-engine DC–7. Do you have any trouble with disposing of this kind of craft?

Mr. RETTINGER. Well, normally after Customs determines that we don't need a craft of that size because Customs would not normally need a craft that size for its own enforcement work, if no other Federal agency needs it, it would be sold at auction. And normally there is no difficulty selling these craft unless they are in unusually poor condition. And if the condition is such as to not justify storage, there are provisions in the Tariff Act for disposing of them either prior to judicial forfeiture or merely disposing of them as scrap if auction would not yield a significant price.

Mr. GIBBONS. Let me ask a question. Suppose—and this has happened down in my State—suppose a sheriff seizes an airplane. Does Customs get involved in that as far as disposal is concerned, or does the sheriff dispose of it?

Mr. RETTINGER. Well, if the sheriff is strictly the one responsible for seizing an aircraft for violation of State laws and Customs is not involved, then they would be disposed of according to State laws. And I do believe most States have forfeiture statutes similar to those in the Tariff Act.

Mr. GIBBONS. Some of my sheriffs have small aircraft. I was just curious about it.

Mr. VANIK. Thank you very much.

We will move to the Customs Valuation Agreement. Mr. Hathaway, are you ready to testify?

STATEMENT OF MICHAEL HATHAWAY, ASSISTANT GENERAL COUNSEL, OFFICE OF U.S. TRADE REPRESENTATIVE, ACCOMPANIED BY JOHN B. O'LOUGHLIN, DIRECTOR OF THE OFFICE OF TRADE OPERATIONS OF THE U.S. CUSTOMS SERVICE

Mr. HATHAWAY. Mr. Chairman, I am Michael Hathaway. I am Assistant General Counsel in the U.S. Trade Representative's Office. Mr. John B. O'Loughlin, the Director of the Office of Trade Operations of the U.S. Customs Service, is with me to answer any questions that you may have for the Customs Service on the implementation of this valuation protocol.

I have a statement and some explanatory materials that we can submit for the record.

Mr. VANIK. Without objection.

[The prepared statement follows:]

STATEMENT OF C. MICHAEL HATHAWAY, ASSISTANT GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

As the Subcommittee is aware, on January 16 the President notified the Speaker of the House and the President of the Senate of his intention, under the Trade Act of 1974, to enter into agreement on a Customs Valuation Protocol that would amend the MTN Customs Valuation Agreement. I am appearing before you today to consult with the Subcommittee regarding the content of the Protocol and the reasons for its negotiation and to discuss several technical amendments attached to it. We hope that the Protocol can be approved in sufficient time to allow us to implement it along with the basic valuation agreement on July 1, 1980.

During the negotiation of the Customs Valuation Agreement, several developing countries expressed their dissatisfaction with a large number of points in the text of that agreement. This dissatisfaction was strong enough to motivate the developing countries to circulate an alternative text of the Customs Valuation Agreement in 1979. A series of consultations were held between the developed and developing countries with a view to eliminating the differences in the texts.

We were very close to completing these negotiations at the time we submitted the text of the basic Customs Valuation Agreement to the Congress together with the other nontariff barrier codes for approval.

Negotiations with developing countries continued through the fall of 1979. Progress on the Protocol to the Customs Valuation Agreement was such at the end of 1979 that the developing countries withdrew from circulation their alternative text of the Valuation Agreement and indicated their willingness to consider for acceptance the basic Customs Valuation Agreement together with the Protocol.

We believe that the Protocol, as negotiated with both developed and developing countries, meets the concerns of the developing countries while preserving the integrity of the basic Agreement. The developed countries have indicated a willingness to accept the Protocol in order to assure meaningful participation by the developing countries in the Customs Valuation Agreement. A number of developing countries have already indicated their willingness to sign the Customs Valuation Agreement provided the developed countries accept the Protocol. We have clear indications from four major developing countries (Argentina, Brazil, India, and the Republic of Korea) that they will sign the Customs Valuation Agreement if the Protocol is accepted by the developed countries. Other developing countries have expressed an interest in adhering at a later date.

In brief, the Protocol consists of eight points: one is a minor change in the Customs Valuation Agreement, two, facilitates existing procedures for developing countries, and the remainder are essentially points of clarification. We have prepared and circulated to Members of the Subcommittee and staff a paper that

details each of the points in the Protocol and the background of the negotiations on each point. I will be pleased to answer any questions that the Subcommittee may have on any of the points in the Protocol. However, the Protocol contains just one change to the basic Customs Valuation Agreement that will necessitate a change in the new valuation law contained in Title II of the Trade Agreements Act of 1979.

That change amends the Customs Valuation Agreement by eliminating one of the four tests under the Agreement by which related parties can establish a transaction value for customs purposes. Specifically, the use of the transaction value for unrelated parties' sales of identical goods from third countries will be eliminated. This amendment will have little impact on the Customs Valuation Agreement but will greatly facilitate acceptance of that Agreement by a significant number of developing countries. All of the developed countries that participated in the negotiation of the Agreement support this amendment.

I don't mean to downplay the significance of the Protocol, but I firmly believe it is a small price to pay for participation by leading developing countries. The related party test we are giving up would be difficult for developing countries to administer. We believe that our concession to the developing countries in agreeing to the Protocol is worthwhile because it should result in meaningful participation by the developing countries in the Customs Valuation Agreement. With the countries we now know will join the Agreement we have a solid base of support that should expand.

I would like to turn now to the technical amendments we propose to attach to the implementing legislation for the Protocol. I would simply like to point out that these amendments result from consultations with several of our trading partners and staff of the U.S. International Trade Commission and the U.S. Customs Service. We have made every effort to inform U.S. industry representatives and interested Congressional staffs of these proposed changes. Basically, these changes will make technical corrections in three sections of the Trade Agreements Act of 1979, and thereby substantially reduce the potential for confusion in Customs' administration of the Act. Several of these changes will ensure that current rates of duty will not be increased on several "non-competitive" chemicals when the revised nomenclature contained in Section 223 of the Act enters into force. In short, Mr. Chairman, they represent what we would have done had the Trade Agreements Act of 1979 had the luxury of several months of technical review. Once again, we had reviewed these changes with domestic industries concerned and believe they cause no problems.

I have submitted for the record a more detailed explanation of these technical amendments.

I would be pleased to answer any questions that you may have concerning the Protocol or the technical amendments attached to it.

PROTOCOL TO THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE (MARCH 31, 1980)

During the negotiation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, commonly referred to as the Customs Valuation Agreement, a number of developing countries expressed their dissatisfaction with a large number of points in the text of that agreement. This dissatisfaction was strong enough to motivate the developing countries to circulate an alternative text of the Customs Valuation Agreement at the time of the initialing of the MTN agreements in Geneva in April 1979. A series of consultations were held between the developed and developing countries with a view to eliminating the differences in the texts. The result of those consultations was development of the Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT document MTN/NTM/W/229/Rev. 1/Add. 1). With the agreement on the Protocol, the developing countries withdrew their alternative text of the valuation agreement and indicated their willingness to consider the Valuation Agreement drafted largely by the developed countries.

We believe that the Protocol, as negotiated with both developed and developing countries, meets the concerns of the developing countries without damaging the integrity of the Agreement. In brief, the Protocol consists of eight points: one is a change in the Agreement, two are procedural easements for developing countries, and the remainder are essentially points of clarification. The developed countries have indicated a willingness to accept the Protocol if this will result in meaningful participation by the developing countries in the Valuation Agreement. On

their part, the developing countries have indicated their willingness to sign the Valuation Agreement provided the developed countries accept the Protocol. We have clear indications from four major developing countries (Argentina, Brazil, India, and the Republic of Korea) that they will sign the Agreement if the Protocol is accepted by the developed countries, while other developing countries have expressed an interest in adhering at a later date.

The following is a point-by-point analysis of the Protocol:

"Point 1. Agree to deletion of the provision of Article 1.2(b)(iv) of the Agreement:"

The first point of the Protocol would require amendment of section 402 of the Tariff Act of 1930 (19 U.S.C. 1401 a), as amended by section 201 of the Trade Agreements Act of 1979, by deleting section 402(b)(2)(B)(iii). This provision requires customs officials to accept a transaction value between a related buyer and seller if the importer demonstrates that the transaction value of the imported merchandise closely approximates the transaction value of identical imported goods from a third country.

The developing countries strongly objected to the inclusion of this provision in the Agreement on the grounds that it conceivably could be used by multinational companies in developed countries to get customs authorities to accept a price between related parties as the basis for transaction value which otherwise would be too low to be acceptable. Under Article 1.2(b) (iv) of the Agreement, the multinational company could justify its price by comparing it to the price of identical merchandise imported from a developing country even though the developing country might be a lower priced producer. Therefore, the multinational company could use an artificially low transfer price in order to pay a lower duty, and thus would become more competitive with lower cost imports from developing countries.

Although it is our belief that in the actual market place the problems envisaged by the developing countries are unlikely to arise, in theory their concerns may have some merit. We find this change acceptable because in our view the test is narrowly constructed and could only be used in very few cases. In addition, there are other provisions in the Agreement to assure equitable treatment for related parties.

"Point 2. Recognize that the five-year delay in the application of the provision of the Agreement by developing countries provided for in Article 21.1 may, in practice, be insufficient for certain developing countries. In such cases a developing country Party to the Agreement may request before the end of the period referred to in Article 21.1 an extension of such period, it being understood that the Parties to the Agreement will give sympathetic consideration to such a request in cases where the developing country in question can show good cause;"

A number of developing countries were concerned that they might be unable to implement the Agreement within five years from the date of acceptance as provided for in Article 21.1 of the Agreement. Furthermore, they were concerned that because the Agreement specifically indicated a five-year period for application, a developing country would not be able to receive an extension should circumstances warrant.

In our view, five years should be sufficient for most countries to implement the Agreement. However, if, after a good faith effort, a developing country found itself technically incapable of applying the Agreement, a reservation to provide additional time could be considered under the Agreement as presently drafted without inclusion of the Protocol.

The result of the discussions between the developed and the developing countries was Point Two of the Protocol which clarifies the reservation provision of the Agreement. Point Two allows a developing country to request an extension of the five-year period and provides that other signatories to the Agreement will give sympathetic consideration to such a request if good cause can be shown. It should be noted that this provision does not commit the United States or any other signatory to an extension should one be requested. Such an extension can be granted only if no signatory objects.

"Point 3. Recognize that developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Parties to the Agreement;"

Several developing countries presently employ officially established minimum values for customs purposes and wished to maintain them through a reservation. It was our belief that such a reservation would be incompatible with the

Agreement. Nevertheless, the developing countries expressed concern that to eliminate such practices all at once could seriously injure their trade regimes.

To deal with this concern, Point Three of the Protocol was agreed upon to clarify the reservation provision of the Agreement. Point Three provides that developing countries which use officially established minimum values may request a reservation to maintain such a system, on a limited and transitional basis, pending their total elimination. Point Three does not commit other signatories to the Agreement to accept the reservation should one be requested. Such a reservation can only be granted if no signatory objects.

In accepting Point Three of the Protocol, the Administration has not undertaken to accept the concept of minimum values. We have made it clear to the developing countries that the United States will not agree to the use of this reservation unless it meets the criteria of being strictly limited in the number of tariff lines involved and that they will be phased out over a short period of time.

"Point 4. Recognize that developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make reservation to Article 4 in the following terms:

" 'The Government of _____ reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6.'

"If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;"

From the outset of the valuation negotiations, the developing countries and, in fact, many developed countries, were opposed to the inclusion of a "computed value" provision in the Agreement. The developing countries were particularly concerned that such a provision would be too administratively burdensome and technically complex for their customs authorities. Their view was that the use of the "computed value" method of valuation involves very sophisticated accounting techniques and would be a severe financial and administrative burden because of the need to verify information in foreign countries.

The developing countries originally were not willing to accept a "computed value" provision whatsoever. Eventually, they agreed that they could apply the "computed value" method once the time delays provided for in Article 21.2 of the Agreement had expired but only if it were done in such a way so that they would not be forced to use that valuation method when other methods provided for in the Agreement were available.

Under Article 4 of the Agreement, importers are given the ability to reverse the order of application of Articles 5 and 6 of the Agreement ("deductive value" and "computed value"). The developing countries objected to this provision because it forces them to use a "computed value" when a "deductive value" may be useable.

The developing countries sought, and we agreed to, the right not to reserve the order of application of Articles 5 and 6 of the Agreement unless they agree to the request. By agreeing to the Protocol, all signatories accept the "computed value" method of valuation as provided for in Article 6, but they retain the right not to agree to requests to reverse the order of application of Articles 5 and 6. At the same time, the reservation does not prevent the customs administration in the developing country from agreeing to a request for reversal of Articles 5 and 6. This reservation, as is the case with all reservations included in the Agreement, is subject to periodic review by the committee of signatories with a view to ending such reservations when they are no longer necessary.

"Point 5. Recognize that developing countries may wish to make a reservation with respect to Article 5.2 of the Agreement in the following terms:

" 'The Government of _____ reserves the right to provide that Article 5.2 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests.'

"If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;"

Under Article 5.2 of the Agreement, customs authorities are permitted to base "deductive value" on the price of goods which have been further processed after importation but before resale, provided that the importer so requests. The developing countries were concerned that they would have to use the "computed value" method of valuation even though the "deductive value" method of Article 5.2 could be used, since Article 5.2 can only be used at the discretion of the importer.

We agreed to Point Five of the Protocol, which allows developing countries to apply Article 5.2 in the absence of a request from the importer, for two reasons. First, even with the reservation, the developing countries will be accepting all valuation methods provided for in the Agreement, and the "computed value" method in particular. We consider the acceptance by the developing countries of the "computed value" method as especially important because a large portion of our trade with the developing countries is between related parties where the incidence of use of this fallback method of valuation is highest. Secondly, Point Five merely allows a reservation. This reservation, as is the case with all reservations included in the Agreement, is subject to periodic review by the committee of signatories with a view to ending such reservations when they are no longer necessary.

"Point 6. Recognize that certain developing countries have expressed concern that there may be problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. The Parties to the Agreement agree that, if such problems arise in practice in developing countries applying the Agreement, a study of this question shall be made, at the request of such countries, with a view to finding appropriate solutions;"

The developing countries were very concerned that the Agreement will require them to accept prices between exporters and sole agents, sole distributors, and sole concessionaires. The developing countries were particularly concerned that this would result in reduced customs revenues since they previously treated these sales as transactions between related parties whereas under the Agreement these transactions, in most cases, will not be treated as such. It was agreed that if such problems arose after the developing countries implemented the Agreement, a study would be undertaken of these problems.

"Point 7. Agree that Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. They further agree that the Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. They recognize that Parties to the Agreement, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries;"

Some developing countries were concerned that under the Agreement, customs authorities might be forced to accept fraudulent information. It was our belief that Article 17 of the Agreement makes it clear that this is not the case; however, the developing countries were not satisfied. As a result, Point Seven of the Protocol was agreed to, which clarified Article 17 further without changing the substance of the Agreement in any way.

"Point 8. Agree that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller."

The developing countries were concerned that under the language of the Agreement, a number of costs and charges, which they believed should legitimately be included in transaction value, could not be included. As a practical matter, it was our view that, in many cases, the items in question would be included under Article 1. As a result, we agreed to Point Eight of the Protocol, which clarified this point without changing the substance of the Agreement in any way.

An Explanation of the Proposed Legislative Amendments to the Trade Agreements Act of 1979

1. Item (1) of the proposed legislation amends article description 408.61 by striking "nitrochlorohydroquinone, dimethyl ester" and inserting in its place "6-chloro-3-nitro-p-dimethoxybenzene". The latter name is a more chemically specific decsription than the former name. This change entails no change in the tariff rate or concession rate for this item.

2. (a) Item (2)(a) of the proposed legislation amends article description 404.32 by deleting "terephthalaldenhyde" from the list of enumerated items covered by this article description because it is not a polycarboxylic acid.

2. (b) Item (2)(b) of the proposed legislation inserts "terephthalaldehyde" under its proper superior heading in the TSUS and assigns a separate tariff line thereby maintaining its negotiated base rate.

3. Item (3) of the proposed legislation amends article description 404.84 by deleting three items from the list of enumerated items covered by this article description. These items are not amines but rather amines with oxygen functions.

Article description 404.92 is amended by adding the three items referenced above to the list of enumerated items covered by this article description. This change entails a minor decrease in the base rates for these three items from 1.7¢ per lb. + 12.4 percent ad val. for item 404.94 to 17¢ per lb. + 12.2 percent ad val. for item 404.92 and no change in their respective offer rates of 5.8 percent ad val.

4. Item (4) of the proposed legislation amends article description 404.84 by deleting two items from the list of enumerated products covered by this article description. These items are not amines but rather amides.

Article description 405.28 is amended by adding the above two items to the list of enumerated items covered by this article description. The chemical name "2-(m-Hydroxyanilino)-acetamide" is added to item 405.28 in lieu of the less specific chemical name "aminophenol, substituted". The transfer of these two items involves no changes in their respective base rates or offer rates.

5. Item (5) of the proposed legislation amends article description 404.92 by deleting two items from the list of enumerated items covered by this article description. These items are not amines with oxygen functions but rather amides.

Article description 405.28 is amended by adding the above two items to the list of enumerated products covered by this article description. This transfer entails a minor increase in the base rates for these two items from 1.7¢ per lb. + 12.2 percent ad val. for item 404.92 to 1.7¢ per lb. + 12.4 percent ad val. for item 405.28, and no change in their respective offer rates of 5.8 percent ad val.

6. Item (6) of the proposed legislation amends article description 405.56 by striking "2-amino-5-benzonitrile" from the list of enumerated products covered by this article description. This deletion eliminates a duplicate entry appearing under this article description. This item will continue to appear under 405.56 as "2-cyano-4-nitroaniline."

7. (a) Item (7)(a) of the proposed legislation amends article description 406.36 by deleting 5 items from the list of enumerated products covered by this article description. These items are not benzenoid heterocyclic compounds in a strict Customs sense and as such should not be enumerated under this item number.

7. (b) Item (7)(b) of the proposed legislation inserts the more appropriate chemical name "3-(5-Amino-3-methyl-1-H-pyrazol-1-yl) benzenesulfonic acid" in item 406.36 in lieu of the less specific chemical name "Iminopyrazol-3-sulfonic acid" and the more appropriate chemical name "1-(o-Ethylphenyl)-3-methyl-2-pyrazolin-5-one" is inserted in item no. 406.36 in lieu of the less specific chemical name "o-Ethylpyrazolone." These amendments entail no change in converted base rate or negotiated concession rates.

7. (c) Item (7)(c) of the proposed legislation creates tariff item no. 406.73 under the superior heading "all other products . . ." and 3 of the items referenced in 7(a) are transferred into and enumerated under this new tariff provision. This change entails no change in either the base rates or offer rates for these items. The erroneous chemical name "1,4-dimethyl-6-hydroxy-3-cyanpyridone-2" is replaced by the correct chemical name "1,4-dimethyl-6-hydroxy-3-cyanopyridone-2".

In addition to the above 5 changes, 1 item "Di (2,2,6,6-tetramethyl-4-hydroxypiperidine) sebacate" is enumerated under 406.73.

8. Item (8) of the proposed legislation amends article description 406.36 by adding one item to the list of products enumerated thereunder.

9. Item (9) of the proposed legislation creates tariff no. 405.85 with a base rate at the nominal rate of duty, and creates tariff item no. 406.82 which enumerates 3 items thereunder establishing base rates at the existing nominal rates of duty. No offer will be made on these tariff items.

10. Item (10) of the proposed legislation deletes item no. 407.15 and creates item nos. 407.14 and 407.16 in its place. The creation of ex-out 407.14 resolves a technical misunderstanding between the European Community and the USITC concerning the notification of this item pursuant to Section 225. No offer will be made on this item.

11. Amendments 11(a), 11(b), and 11(c) of the proposed legislation correct a technical deficiency in the TSUS. Headnote 1 of chapter 9 of schedule 4 of the TSUS specifies that varnishes described in chapter 9 and also in chapter 1 are to

be classified in chapter 9. The term "lacquers" is construed by Customs to be a subset of the broader term "varnishes". This headnote notwithstanding, the term "varnish" erroneously appears in item nos. 408.52 and 413.50 of subpart C of chapter 1, and the term "lacquers" erroneously appears in item no. 408.52 of the same subpart.

11. (a) Item (11)(a) of the proposed legislation amends the headnotes to supart C of part 1 of schedule 4 of the TSUS by striking headnote 6 (defining varnishes) from this subpart.

11. (b) Item (11)(b) of the proposed legislation deletes items no. 408.52 "varnishes and lacquers" from the TSUS because of the superseding headnote to chapter 9 of schedule 4.

11. (c) Item (11)(c) of the proposed legislation amends item no. 413.50 by deleting the term "varnishes" from this article description.

Imported varnishes (as defined in the TSUS) should properly enter the United States through item nos. 474.40, 474.42, 474.44, or 474.46.

12. Item (12) of the proposed legislation amends article description 406.21 by deleting "2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate" from the list of enumerated items covered by this article description and inserting it in item no. 408.24. This item is an insecticide and not a herbicide. As a consequence of this change, the base rate of duty for this item is increased from 1.7¢ per lb. + 12.6 percent ad val. for item 408.21 to 1.7¢ per lb. + 12.8 percent ad val., and the offer rate is increased slightly from 6.8 percent to 6.9 percent.

13. (a) Item (13)(a) of the proposed legislation amends article description 408.24 by deleting this item from the list of enumerated products covered by this article description because this item is a bactericide and not an insecticide.

13. (b) Item (13)(b) of the proposed legislation eliminates article description 408.32 and creates item nos. 408.31 and 408.32 in its place. In essence, this simply creates a separate tariff line for "1,2-Benzisothiazolin-3-one" with no change in either the base rate or offer rate for this item.

14. Amendments (14)(a) and (14)(b) of the proposed legislation transfer "Ethaverine hydrochloride" from item no. 411.36 to its proper classification in item no. 411.44 where it will be enumerated among other items covered by this article description. This transfer entails a minor increase in the base rate of duty for this item from 1.7¢ per lb. + 13.5 percent ad val. to 1.7¢ per lb. + 13.9 percent ad val., and a slight increase in the offer rate from 6.9 percent ad val. to 7.0 percent ad val.

15. Item (15) of the proposed legislation inserts "clemastine hydrogen fumarate" into article description 411.52.

The amendment to section 852 of the Trade Agreements Act of 1979 would delete headnote 1 to subpart D, part 12 of schedule 1 of the TSUS and substitute a new headnote 1 in lieu thereof. Section 852 was intended to change the method of duty assessment for alcoholic beverages from a wine gallon to a proof gallon basis. While section 852 modified all of the rates of duty to a proof gallon basis, headnote 1 to the affected subpart (which provides for the wine gallon method of duty assessment) was inadvertently left in subpart 1 unchanged. This has resulted in an unintended conflict. The proposed amendment would eliminate this conflict by modifying headnote 1 to provide for duty assessment on a proof gallon basis.

The amendment to section 1107(a) of the Trade Agreements Act of 1979 would make a conforming change to general headnote 3(a)(i) of the TSUS. Section 1107(g)(2) redesignates headnote 4 to subpart A, part 7, schedule 7 of the TSUS as headnote 3. Since this headnote is referred to in general headnote 3(a)(1), a conforming change should have been made to that headnote.

SEC. —. AMENDMENTS TO SECTION 223(d)(2) OF THE TRADE AGREEMENTS ACT OF 1979

Section 223(d)(2) of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 205-235) is amended as follows:

(1) By striking the article description for item 403.61 and inserting the following new article description in lieu thereof:

"5-Chloro-2-nitroanisola; 6-Chloro-3-nitro-p-dimethoxy-benzene; Dimethyl diphenyl ether; 4-Ethylguaiacol; and 2-(α-Hydroxyethoxy)phenol".

(2)(a) By striking the article description for item 404.32 and inserting the following the new article description in lieu thereof:

"Naphthalic anhydride; Phthalic acid; and 4-Sulfo-1, 8-naphthalic anhydride"; and

(b) By striking item 403.76 and inserting the following new items 403.74 and 403.76 in lieu thereof:

"Aldehydes, aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols, and other single or complex oxygen-function aldehydes; cyclic polymers of aldehydes and paraformaldehyde:

"403.74	Terephthalaldehyde	1.7¢ per lb. +11.6% ad val.	7¢ per lb. +37% ad val.
"403.76	Other	1.7¢ per lb. +12.9% ad val.	7¢ per lb. +41% ad val.".

(3) By striking "3-N-Ethylanilino)propionic acid, methyl ester;", "1-(p-Nitrophenyl)-2-amino-1,3-propane diol;", and "Toluidine carbonate;" from item 404.84, and by inserting "3-(N-Ethylanilino)propionic acid, methyl ester;" immediately after "4-Dimethylaminobenzaldehyde;", "1-(p-Nitrophenyl)-2-amino-1,3-propanediol;" immediately after "2-Methyl-p-anisidine [NE_x-1];", and "; and Toluidine carbonate" immediately after "L-Phenylalanine" in item 404.92.

(4) By striking "p-Aminobenzoylamino-naphthalene sulfonic acid;" and "Aminophenol, substituted; from item 404.84, and by inserting "p-Aminobenzoylaminonaphthalenesulfonic acid;" immediately after "p-Aminobenzoic acid isooctylamide; and "2-(m-Hydroxyanilino)acertamide;" immediately after "Gentisamide;" in item 405.28.

(5) By striking "p-Acetaminobenzaldehyde;" and "Nitra acid amide (1-amino-9,10-dihydro-N-(3-methoxypropyl)-4-nitro-9,10-dioxo-2-anthramide); and" from item 404.92, and by inserting "p-Acetaminobenzaldehyde;" immediately before "p-Acetanisidide" and "Nitra acid amide (1-amino-9,10-dihydro-N-(3-methoxypropyl)-4-nitro-9,10-dioxo-2-anthramide)" immediately after "N-(7-Hydroxy-1-naphthyl)acetamide;" in item 405.28.

(6) By striking "2-Amino-5-nitrobenzonitrile;" from item 405.56.

(7)(a) By striking "4-Chloro-l-methylpiperidine hydrochloride;", "1-4-Dimethyl-6-hydroxy-3-cyanpridone-2;", "o-Ethylpyrazolone;", "Iminopyrazole-3-sulfonic acid;", and "3-Quinuclidino;" from item 406.36;

(b) By inserting "3-(5-Amino-3-methyl-l-H-pyrazol-l-yl)benzenesulfonic acid;" immediately after "Aminomethylphenylpyrazole (Phenylmethylaminopyrazole);" and by inserting "l-(o-Ethylphenyl)-3-methyl-2-pyrazolin-5-one;" immediately after "6-Ethoxy-2-benzothiazolethiol;" in item 406.36; and

(c) by inserting in numerical sequence the following new item:

"406.73	4-Chloro-l-methylpiperidine hydrochloride; 1,4-Dimethyl-6-hydroxy-3-cyanopyridone-2; Di(2,2,6,6-tetramethyl-4-hydroxypiperidine)sebacate; and 3-Quinuclidinol	1.7¢ per lb .—12.4% ad val.	7¢ per lb. +39.5% ad val.".

(8) By inserting "4-[[4,6-Bis (octylthio)-1,3,5-criazine-2yl]amino]2-6-di-tert-butylphenol;" immediately after "3-Amino-1-(2,4,6-trichloro-phenyl)-5-pyrazolone;" in item 406.36.

(9) By inserting in numerical sequence the following new items:

"405.85	4,4.'—Diphenyl-bis-phosphonous acid, di(2',2'',4',4''-di-tert-butyl)phenyl ester	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.", and
"406.82	Dehydrolinalool; Dimethylsuccinoyl succinate; and Isophytol	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.".

(10) By striking item 407.15 and inserting the following new items in lieu thereof:

	"Other:		
"407.14	Mixtures of 1,3,6 Naphthalenetrisulfonic acid and 1,3,7 Naphthalenetrisulfonic acid	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
"407.16	Other	1.7¢ per lb. +13.6% ad val., but not less than the highest rate applicable to any component material	7¢ per lb. +43.5% ad val., but not less than the highest rate applicable to any component material".

(11)(a) By striking subpart C headnote 6, and by redesignating subpart C headnotes 7 through 12 as headnotes 6 through 11, respectively;

(b) by striking item 408.52; and

(c) by striking the article description for item 413.50 and inserting "Paints and enamel paints, and stains" in lieu thereof.

(12) By striking "2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate (Bendiocarb);" from item 408.21 and inserting it immediately before "and" in item 408.24.

(13) (a) By striking "1,2-Benzisothiazolin-3-one;" from item 408.24; and

(b) by striking item 408.32 and inserting the following new items 408.31 and 408.32 in lieu thereof:

	"Other:		
"408.31	1,2-Benzisothiazolin-3-one	1.7¢ per lb. +12.8% ad val.	7¢ per lb. +41% ad val.
"408.32	Other	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.".

(14) (a) By striking items 411.36, 411.40 and the superior heading thereto, and inserting the following new item in lieu thereof:

"411.40	Papaverine and its salts	1.7¢ per lb. +28.9% ad val.	7¢ per lb. +104% ad val."; and

(b) by inserting "Ethaverine hydrochloride;" immediately after "Ergonovine maleate;" in item 411.44.

(15) By inserting "Clemastine hydrogen fumarate;" immediately before Diphenhydramine" in item 411.52.

SEC. —. AMENDMENT TO SECTION 852 OF THE TRADE AGREEMENTS ACT OF 1979

Section 852 of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 292) is amended by striking the following:

"So much of subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States as follows headnote 1 is amended to read as follows:"

and by inserting the following in lieu thereof:

"Subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States is amended to read as follows:

"*Subpart D headnote*

"1. The rates of duty provided for the products enumerated in this subpart shall be assessed on a proof gallon basis (i.e., the rates shown indicate the amount of duty which shall be collected on each gallon of an imported product at 100 proof). The amount of duty which shall be collected for each gallon of a product which is imported at more than or less than 100 proof shall bear the same ratio to the applicable rate of duty as the proof of the imported product bears to 100 proof.".

SEC. —. AMENDMENT TO SECTION 1107(a) OF THE TRADE AGREEMENTS ACT OF 1979

Section 1107(a) of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 313) is amended by striking subsection (1) and by inserting the following new subsection (1) in lieu thereof:

"(1) by inserting "and" after "subpart E," and by striking "headnote 4" and inserting "headnote 3" in lieu thereof, in headnote 3(a)(i), and".

Mr. HATHAWAY. Let me summarize the statement. The developing countries, in the course of negotiations on the Customs Valuation Code, were very close to coming to agreement with us when we submitted the valuation agreement to the Congress last spring. We weren't quite far enough along to get them in. We had made enough progress so that by late in 1979 we were in fairly good shape on the valuation protocol. What it does, for purposes of U.S. law, is only a small point. It will eliminate one test by which related parties would have been able to establish a test value for determination of a transaction value. If a related party in a transaction could not use transaction value for customs purposes because they could not show that the relationship had not influenced the price, Mr. Chairman, then they could still estalish a transaction value through a test value for identical products from a third country.

Developing countries felt this would be difficult for them to enforce this test. This is the only amendment to the substantive text of the agreement. We think it is really quite a small price to pay for the participation of developing countries.

Two other points in the protocol are of interest to us, both really related to the same area of administrative burden, Mr. Chairman. In the valuation agreement, as you may or may not recall, there was an option for the importer to reverse the order of a computed value or a deductive method valuation.

Developing countries all along have felt it would be very difficult for them to administer a computed value as a basis of valuation. Therefore, in the protocol we have agreed to allow developing countries to approve an importer's request. So that an importer who requested to use computed value as opposed to a deductive method of valuation, the Customs officials in those countries who so request it would have to approve of that reversal in the order of valuation tests.

Those two points are really the only other substantive points in the valuation protocol. The remainder of the alterations are clarifications which we really feel do not change, in any significant way, the basic valuation agreement.

We have also attached to the bill some other points that are technical corrections to some of the chemical provisions that we were making on the ASP conversions. Mr. Tom O'Connell is here and will be able to answer any detailed questions you may have. We have submitted explanatory materials for the record on those proposals.

Mr. VANIK. Can you explain the precise legal status of the supplementary protocol?

Mr. HATHAWAY. Negotiations on the supplementary protocol have been completed. We have not yet signed or initialed the agreement. We will wait until the close of the consultation period, which should be in the next several weeks. Then we will sign the valuation protocol subject to ratification. Following that, in the very near future, we hope to be working with the staff and the committee to develop an appropriate implementing bill in the same manner we did for the MTN Trade Agreements of 1979.

Mr. VANIK. What would happen if the United States does not implement the protocol but adheres to the original valuation agreement?

Mr. HATHAWAY. We would not get the agreement of the developing countries. Four very important developing countries are prepared to accept the basic valuation agreement if we and the other developed countries accept the protocol along with the agreement. Those countries are Brazil, Argentina, Korea, and India.

Other developing countries are considering the agreement, and I think favorably considering it, but I think it is fair to say that they will not accept the basic valuation agreement unless we also implement the protocol.

Mr. VANIK. Is it anticipated the United States and the Common Market will implement the protocol as early as July 1, 1980, to coincide with the entry of the force into the valuation code?

Mr. HATHAWAY. Our preference would be to implement both the basic agreement, our basic law, and the protocol at the same time. While it is a minor change in U.S. law, it would be a simpler and cleaner operation. We are still discussing with the European Community whether they will be prepared to implement the basic agreement on July 1. If they are, they should also be in a position to implement the protocol. We are still hopeful that they will be able to

implement, and that we will be able to be satisfied that they are ready on July 1. If they are not, it will have to be some later date. But that date is our target.

Mr. VANIK. What is the nature of the assurances which our country has received from developing countries indicating their willingness to enter into the valuation agreement?

Mr. HATHAWAY. The delegation in Geneva is working now on exchanges of letters. Some countries, particularly Argentina, have expressed a willingness to sign the protocol now, subject to ratification. With the other developing countries, we have had the preliminary exchange of draft letters expressing their intent to accept the agreement if we are able to accept the protocol.

Mr. VANIK. Article 21 of the valuation agreement already gives developing countries a full 8 years to implement a computed value method. Isn't this enough time for them to implement the system without giving them further open-ended extensions?

Mr. HATHAWAY. We believe it is. We have no reason now to believe that we would need to give them additional time. All we are saying in the protocol is that, if they can show just cause, we would be willing to give favorable consideration to a further extension.

This is probably something we would have done, or considered doing anyway. They can always, under the code, ask for a reservation. As long as that reservation was agreed to by the other parties, it could have been granted.

This particular provision only requires us to be sympathetic, if they can show a good case. We have told them in the course of the negotiations that it is not going to be easy to show just cause. We think 5 years, and the total period is 8 years for the computed method, is enough.

The developing countries are a little bit concerned, though. I think part of their concern was that they had not yet seen how the implementation would work for the developed countries. They wanted a little bit of assurance that, if problems developed for other countries, the developing countries would have a sufficient amount of time to implement the computed value method.

Mr. VANIK. What are the prospects for bringing in other LDC's into the agreement besides the four you mentioned?

Mr. HATHAWAY. We think they are quite good for a number of countries. Our delegations traveling to the Asian countries and to Latin American countries have received generally favorable responses to the valuation agreement.

Most developing countries have a wait and see attitude now; they want to see how the other countries do in implementing the agreement. I think, with the valuation agreement going into effect internationally and having the Customs Cooperation Council and the technical committee working on it from the start of next year in a formal way, that there will be a lot of pressure for other countries to use the same method of valuation that all of the major trading countries are using. Then we should be in a much better position to encourage others to join this new method of valuation. The Brussels definition of value picked up a lot of new signatories just because of the sheer number of other countries that were applying it.

Mr. VANIK. Do you think that the developing countries have a legitimate complaint against the practices of the multinational corporations?

Mr. HATHAWAY. I don't know that they have a legitimate complaint. I think they have a legitimate concern that their customs officials may have difficulty in dealing with the expertise of multinational corporations. Where that really comes up in the Valuation Agreement is the computed method of valuation. The developing countries are concerned that they would not have the expertise to deal with a method of valuation that pitted their accountants and valuation experts against the resources of a multinational company. That is the reason they are reluctant.

I think it is a legitimate concern on their part. I don't know if we could characterize it as a reasonable complaint on their part.

Mr. VANIK. What would be some examples of "good cause" where by the United States would give sympathetic consideration to a request by an LDC to extend the 5-year implementation period?

Mr. HATHAWAY. I suppose if we had a government in a developing country that was preparing in good faith to accept the results of the negotiation and there were some major political, economic, or military upheaval in their country, I suppose that that would certainly be reasonable grounds for them suspending further activity.

If there were a problem in developed countries that we have not foreseen and that was making it difficult for other more sophisticated customs services to implement the agreement, then I think it would be reasonable for us to give less sophisticated officials more time to accept the new system of valuation.

We don't foresee that as being the case. And we frankly don't foresee a need to give additional time. We did that in part as a political gesture to show that we would in good faith consider any problems that they had.

Mr. VANIK. How would the elimination of officially established minimum values operate to injure the trading systems of the LDC's?

Mr. HATHAWAY. Well, for developing countries, and the same thing is true with respect to changing the valuation systems, their duties are significantly higher. The revenue they generate from customs duties, as was true many years ago in the United States, is a significant portion of their general revenue. If they adopt valuation on the basis of the transaction price, Mr. Chairman, they might in fact lose revenue. They want to be able to adjust to that in an orderly way.

With respect to minimum values, we had anticipated that there would be a request for some additional time, but we don't know that there in fact will be one now.

Mr. VANIK. What will the United States consider to be a "limited and transitional" basis for the retention of minimum values?

Mr. HATHAWAY. Well, we have taken a very hard line on that. Any country that requests such a transition will have to make a very firm commitment to eliminate minimum values over a short period of time. We anticipated at one time that one country would have some concern with what they had characterized as minimum values. After further examination, we don't really believe that they have a problem. And we don't know now that that provision of the protocol will have to be used by any developing countries.

Mr. VANIK. What has been the reaction of the other signatories to the Valuation Code to the protocol, and what are they doing about it?

Mr. HATHAWAY. Well, the other countries are going through the same procedure we are. Some countries will be getting approval of the protocol at the same time they will be getting approval of the basic valuation agreement. Others have proceeded first with the basic agreement and then with the protocol.

Our plan is to have all major trading partners, the European community, Canada, Japan, and other accept the protocol at the same time we would formally accept the valuation agreement, assuming that everybody can ratify it. For the most part, I would add, I think all of our trading partners and the developing countries believe that this was a very reasonable agreement. Our assessment is that it is a fair price to pay for developing country participation.

Mr. VANIK. Has the alternative valuation text of the developing countries been officially withdrawn?

Mr. HATHAWAY. It has not been circulated. That was our agreement with them in November when the certified texts were being prepared for circulation by the GATT Secretariat. This would make them then open for signatures. We were sufficiently far along in the work on this valuation protocol that the developing countries agreed not to circulate the alternative text. So it, in effect, has been withdrawn.

Mr. VANIK. Can you briefly explain the problems anticipated by the developing countries with respect to applying the transaction value method to sole distributors, sole agents, and sole concessionaires?

Mr. HATHAWAY. I believe that that involves just what is determined to be a related party, and it would involve some change on their part. Maybe Jack O'Loughlin.

Mr. O'LOUGHLIN. Mr. Chairman, this question involves a provision in the basic Valuation Code where a deliberate provision was made that sole concessionaires would not be considered as related parties. I think there are a few countries that are having a tough time accepting that kind of concept. On the other hand the code is very clear in this respect, and I don't think there will be any difficulties in the final analysis.

Mr. VANIK. Mr. Gibbons.

Mr. GIBBONS. On transactions between related parties, what rule did we finally come up with? On transactions, on variations what is the rule now?

Mr. O'LOUGHLIN. Very briefly it will be somewhat close to our existing statute, although there will be recognized differences. The related party transaction will be looked upon on the basis of its own merits. In other words, the related party or the importer in this case will be given an opportunity to demonstrate that his price is a valid price for the purpose of establishing transaction values. He will be able to explain how he arrived at a price. He won't have to meet the fair value test in our present statute. He will be able to do it on the merits of his own pricing system.

On the other hand, if this is not sufficient then he is given an opportunity to demonstrate that his price nevertheless meets certain tests that are provided for in the code and in our statute. If these tests are met, then the price can be accepted as a transaction value.

Mr. GIBBONS. I ought to know the answer to this question but I don't, so I am asking you: Is it similar to the same valuation test that

we have in the Internal Revenue Code, or does it differ, or do you know?

Mr. O'LOUGHLIN. I am sorry, sir, but I do not know that.

Mr. GIBBONS. It would seem that now that we have entered into this agreement that perhaps we ought to try to cut out the paperwork a little by having the same test for tax purposes and for Internal Revenue purposes as we do for Customs purposes. But you don't know the answer.

Does anybody that is going to testify later on know the answer? Apparently they don't.

Mr. HATHAWAY. I would be happy to provide it for you.

Mr. GIBBONS. I wish you would. I am just trying to find out a way to cut down the redtape or the useless redtape, I should say.

[The information follows:]

There are three related party tests appied under the Internal Revenue Service regulations (26 CFR section 1.482(e)), to establish the price, called the arm's length price, that an unrelated party would have paid under the same circumstances for the property involved in the sale between the related parties.

The first is a "comparable uncontrolled price" method which sets the arm's length price of a controlled sale as equal to the price paid in a comparable sale between unrelated parties, with certain adjustments.

If there are no comparable sales and certain other conditions are present, the "resale price method" of valuation is used. This method sets, the arm's length price of the sale as equal to the applicable resale price, reduced by an appropriate markup and adjusted for value added by the seller.

Finally, where neither of the first two methods is appropriate, the "cost plus method" is used. Here, the arm's length price of the sale is computed using the cost of production of the item plus the gross profit adjusted in certain ways.

These methods, summarized above, are defined in full in the regulations.

Mr. VANIK. Any other questions? Thank you very much. We certainly appreciate your extensive testimony and the response to questions.

We move now to the public witnesses on the Protocol to the Customs Valuation Agreement. Our first witness is Mr. Elliott, manager of the customs international trade affairs of Procter & Gamble. We would be very happy to hear from you.

STATEMENT OF DAVID J. ELLIOTT (PROCTER & GAMBLE), ON BEHALF OF THE JOINT INDUSTRY GROUP

Mr. ELLIOTT. Thank you, Mr. Chairman. As you requested, I will file the full statement for the record.

Mr. VANIK. Your full statement will be admitted into the record as submitted. You may proceed and excerpt from it in any way you see fit.

Mr. ELLIOTT. My name is David Elliott, manager of customs and international trade affairs of the Procter & Gamble Co. Today I represent the Joint Industry Group, a coalition of 17 business associations broadly representative of U.S. exporting and importing interests.

This group has had a particular interest in the Customs Valuation Agreement. Day-in and day-out customs valuation procedures are probably the major nontariff barrier to international trade.

Customs valuation procedures create particular problems in the developing countries, problems that can be minimized with a uniform worldwide system. Therefore, the Joint Industry Group would very

much like to see the developing countries participate in the valuation agreement. And we believe that this protocol represents a fair and a reasonable accommodation of their specific needs.

A few comments on some of the elements in the protocol appear appropriate. First, the removal from U.S. law of one of the alternative tests for the acceptability of a price between related parties will present few problems. We anticipate that this provision would only rarely apply and that its deletion will have little impact on either importers or the Customs Service.

Second, we do have some concerns about countries that might try to obtain extensions of the permissible 5-year implementation delay due to dilatory performance.

Therefore, we respectfully suggest that the committee consider providing guidance in the legislative history to future U.S. trade representatives indicating that such delays should only be acceptable where a developing country has taken adequate steps to implement on time or is unable to do so for reasons beyond his control.

We also respectfully suggest the committee consider including legislative history guidance that would encourage future U.S. trade representatives to accept only the fewest possible retentions of minimum customs values for the shortest possible transition periods.

This kind of artificial valuation is perhaps the single most unfortunate aspect of some countries' valuation systems. Minimum customs values can at time represent a doubling, or even a greater multiple, of the effective rate of duty by doubling the base against which it is applied.

Third, there are two provisions in the protocol that permit developing countries to limit the use of computed value. That is a value based on manufacturing costs kept in accordance with generally accepted accounting principles. While we are aware of the concerns of the developing countries about this basis of value, which is determined in countries other than their own, this kind of system is well established in U.S. practice and is generally preferred by the U.S. Customs Service.

Further, we not that developing countries have an additional 3 years over the 5-year implementation delay provided by the protocol to adopt computed value.

Therefore, we suggest that the U.S. trade negotiator not be overly generous if he finds these provisions being abused.

Finally, we suggest that the committee consider including in its record an interpretation of provision 8 to the protocol that it does no more than restate article 1.1 of the agreement and the note thereto. Any other interpretation could create administrative conflicts and problems down the road.

In conclusion, Mr. Chairman, we urge the U.S. Congress to approve and implement this protocol. Further, we deeply appreciate this opportunity to present our views to you. Thank you very much.

[The prepared statement follows:]

STATEMENT OF THE JOINT INDUSTRY GROUP

Good morning. My name is David J. Elliott, Manager of Customs and International Trade Affairs for the Proctor & Gamble Company. I am appearing here today on behalf of the Joint Industry Group, an ad hoc coalition interested

in the subject of Customs valuation from both the exporting and importing points of view.

The Joint Industry Group is here representing the following associations and the businesses they represent:

1. The Air Transport Association of America, which represents nearly all scheduled airlines of the United States.

2. The American Electronics Association, which has over 900 high technology and electronics companies as members. Those companies are mostly small to medium in size, with two-thirds employing less than 200 employees.

3. The American Importers Association, representing over 1,100 companies, mostly small to medium in size, plus 150 customs brokers, attorneys and banks.

4. The American Paper Institute, a national trade association of the pulp, paper and paperboard industry. Its members produce more than 90 percent of the nation's output of these products. The U.S. paper industry opeates in all States of the Union, employing over 700,000 people.

5. The American Retail Federation, an umbrella organization encompassing thirty national and fifty state retail associations that represent more than one million retail establishments with over 13,000,000 employees.

6. The Chamber of Commerce of the United States, representing 90,000 companies and 4,000 state and local Chambers of Commerce.

7. The Cigar Association of the United States, which includes nearly all U.S. cigar sales and major cigar tobacco leaf dealers.

8. The Computer & Business Eqiupment Manufacturers Association, including over forty members with 1,000,000 employees and $35 billion in worldwide revenues. Members range from the smallest to the largest in the industry.

9. The Council of American-Flag Ship Operators, which represents the interests of the American liner industry.

10. The Electronic Industries Association, its 287 member companies, which range in size from some of the very largest American businesses to manufacturers in the $25–50 million annual sales range, have plants in every State in the Union.

11. The Foreign Trade Association of Southern California, which represent 450 firms in Southern California in the import-export trade.

12. The Imported Hardwood Products Association, an international association of 250 importers, suppliers and allied industry members. Members handle 75 percent of all imported hardwood products and range in size from small private businesses to the largest in the industry.

13. The Motor Vehicle Manufacturers Association, whose eleven members produce 99 percent of all U.S.-made motor vehicles.

14. The National Committee on International Trade Documentation, which includes many of the major U.S. industrial and service companies.

15. The National Customs Brokers and Forwarders Association of America, consists of about 400 licensed customs brokers and forwarders and 23 affiliated associations throughout the U.S., whose members are also brokers or forwarders in various cities.

16. The Scientific Apparatus Makers Association, manufacturers and distributors of scientific, industrial and medical instrumentation and related equipment.

17. The U.S. Council of the International Chamber of Commerce, a business policy-making organization which represent and serves the interests of several hundred multi-national corporations before relevant national and international authorities.

The Joint Industry Group is interested in the Customs Valuation Agreement because on a day-to-day basis, current customs valuation procedures used throughout the world often create a major non-tariff barrier to international trade. They can be a particular problem in the developing countries. We believe those problems can be minimized if a uniform system is used world-wide.

We would very much like to see the developing countries participate in the Valuation Agreement. This will not only remove a serious non-tariff barrier, but also be a step towards more efficient resource allocation in these countries. Consequently, we have been most interested in the Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, both while it was being negotiated and its approval and implementation by the U.S. Congress.

The Joint Industry Group supports the Protocol and respectfully recommends, Mr. Chairman, that it be approved and implemented by the Congress. We further suggest that this action be taken alone and without other changes to the Trade

Agreements Act of 1979, excepting only technical changes necessary to correct any deficiencies in that Act that may have been identified relative to the Agreement Implementing Article VII of the GATT. At this point, the Joint Industry Group is unaware of any such changes that need to be made.

At this point, Mr. Chairman, we would like to comment briefly on the various elements in the Protocol.

1. Deletion of the provision of Article 1.2(b)(iv). This provision is one of the alternative tests of the acceptability as customs value of a price between related parties. It reads as follows: "The transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related."

This provision was enacted into Section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1402) as 402.(b)(2)(B)(iii) in the following form: "(iii) the transaction value determined under this subsection in sales to unrelated parties of merchandise, for exportation to the United States, that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced;"

The JIG believed, the Agreement was being negotiated, that this provision is a commercially, economically and administratively appropriate means of determining customs value in certain related party transactions. Nevertheless, we do believe that it is an important means of doing so, since it would undoubtedly only be used in rare cases. Therefore, its deletion from the Agreement and from U.S. law is certainly acceptable to the Joint Industry Group as a means of encouraging developing country participation.

2. Article 21.1 provides the developing countries with five years for implementation from the date of their participation in the Agreement. This provision in the Protocol requests sympathetic consideration to requests for extensions if a country can show "good cause" therefor. The Joint Industry Group supports such sympathetic consideration where a country has made a good faith effort to implement the Agreement on time, but for grounds beyond its reasonable expectation or control is unable to do so. Simply failing to take adequate and appropriate action to be ready to implement should not be considered "good cause". We respectfully suggest, Mr. Chairman, that the committee consider providing such guidance to the United States Trade Representative in the legislative history to the Act approving and implementing this Protocol.

3. Minimum customs values are one of the least desirable features of current customs valuation systems. They are often set at levels well above prices in the marketplace and have a significant multiplying effect on rates of duty. Their elimination, therefore, can have an impact on local producers who may heretofore have been removed from the competition of the international marketplace. Consequently, there is a basis for developing countries retaining them "on a limited and transitional basis". Nevertheless, we here also respectfully suggest that legislative history guide our negotiators to accept the minimum possible retentions for the shortest possible transition periods.

4. The Agreement provides the importer—almost always in related party situations—the option of reversing the last two steps in the hierarchy of valuation approaches and to have valuation determined, in essence on the basis of his production costs in the producing country rather than upon his re-sale price less importing and distribution costs in the importing country. This provision in the Protocol would limit this right in less developed countries by making it subject to approval of the local customs authorities.

The Joint Industry Group continues to believe that this option is an appropriate element in the Agreement and will provide exporters with greater uniformity and certainty in valuation. We also believe that the internal taxing authorities in the exporting country, whose economic interest lies in the same direction as the customs authorities in the importing country, will effectively control potential abuse. Nonetheless, we recognize the concerns of the developing countries and their relatively limited technical resources. Therefore, we are prepared to accept this exception to the basic rule for developing countries. We note that Article 21 already provides developing countries with an additional 3 years to implement computed value—a total of eight years from participation in the Agreement. Consequently, we believe that customs authorities should only refuse to approve optionality in rare and unusual cases.

5. The Agreement provides that the resale price of goods that have been processed after importation may, under certain circumstances, be used as the

starting point for calculating customs value. The costs of the processing and of the importing and distribution costs are then deducted so that the re-sale price is, in effect, adjusted back to the border. The Agreement and U.S. law permit this approach only with the importer's agreement. The Protocol would permit this approach to be used by the developing countries only, and still subject to all the other limitations, without this agreement. For the same reasons we are willing to accept provision 4, The Joint Industry Group is also prepared to accept this provision.

6. The Joint Industry Group agrees to this provision, which specifies that if problems arise in using the prices paid by sole agents, sole distributors and sole concessionaires as the basis for customs valuation, then a study will be made of this question with a view of finding appropriate solutions. We do not anticipate many problems arising since we believe the related party provision (Article 15.4) should provide adequate protection.

7. The Joint Industry Group agrees that customs authorities have the right to expect the cooperation of importers in investigations aimed at verifying elements of value declared or presented to customs.

8. The Joint Industry Group agrees that "the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller". We read this provision as doing no more than re-stating Article 1.1 and the Note thereto.

Mr. Chairman, we appreciate the opportunity to present our views and respectfully recommend that the Protocol be approved and implemented by the United States Congress. Thank you.

Mr. VANIK. Are you satisfied that the provisions in the protocol will not be used by LDC's to indefinitely string out their implementation of the valuation agreement?

Mr. ELLIOTT. We feel that it is necessary for the U.S. negotiators to keep our developing countries' trading partners' feet to the fire on this issue so that they don't drag it out. It is going to be a job which the trade negotiators are going to have to work at very hard.

Mr. VANIK. The time limits for adoption of the valuation agreement are fairly open ended. In addition there are still countries adhering to the old Brussels definition of value system, BDV.

Doesn't this indicate a continuation of nonuniformity in customs values and valuation methods between countries?

Mr. ELLIOTT. We are going to have nonuniformity for longer than we would like. There are still countries that haven't even got to Brussels. However, the adoption of the valuation agreement as the valuation system by the Customs Cooperation Council and their cessation of technical support for the continuation of Brussels should enhance the developing countries' interest in moving to the new system.

It should be easy to administer, and it should work well for them. I think as they see it being applied by other countries they will be attracted to it. Certainly we hope so.

Mr. VANIK. Can you explain the specific problem that U.S. exporters have with minimum value systems and what you consider to be a limited and transitional time for such systems to be retained?

Mr. ELLIOTT. The problems with the minimum value system—perhaps I can exemplify this with one country, with Mexico which has had official prices. They may have a duty of 25 or 50 or 70 percent depending upon the type of item and they apply it against some official price or the price of the goods, whichever is higher. These official prices frequently are significantly greater than the actual price in the transaction.

Therefore, the effective amount of duty is significantly higher than the rate times the commercial values of the goods.

The transition times will probably have to be a result of negotiation. We have established some precedent in the United States by conversions of our own minimum price system, the American selling price. We have given the Canadians some deferral time to move away from their fair market value system.

So something on the order of a 3- to 5-year transition might be something we have to live with.

Mr. VANIK. Are there any further questions?

Mr. FRENZEL. No questions.

Mr. JONES. No questions.

Mr. VANIK. Mr. Russo?

Mr. RUSSO. No questions.

Mr. VANIK. Thank you very much.

The next witness is Mr. Thomas Evans of Delaware on H.R. 6269.

STATEMENT OF HON. THOMAS B. EVANS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Mr. EVANS. Thank you. Gentleman, I appreciate the opportunity to testify this morning. In November 1977, the 95th Congress passed Public Law 95–159, a bill to suspend the imposition of a 5-percent tariff on the importation of Adriamycin™—doxorubicin hydrochloride—for injection. The 2-year suspension granted is scheduled to expire on June 30, 1980. My legislation—H.R. 6269—is designed to simply extend that suspension for an additional 2 years.

Adriamycin is an anticancer drug and is manufactured in Italy. The drug is imported into the United States and sold by the domestic distributor, Adria Laboratories, Inc. The compound is not manufactured in the United States and the patent is owned by the foreign manufacturer.

Since its introduction into the United States in 1974, Adriamycin has rapidly achieved wide acceptance and utilization in the treatment of a broad spectrum of cancers, to include breast cancer, bladder cancer, lung cancer, Wilm's tumor, neuroblastomas, soft tissue and bone sarcomas, thyroid cancer, Hodgkin's disease and malignant lymphoma. Adriamycin is considered the most active anticancer drug for most of these cancers and is generally considered the major anticancer pharmaceutical in use today.

Adriamycin is supplied in a freeze-dried powder form and is administered intravenously after reconstitution. Because of its method of manufacture and not its intended use, Adriamycin is classified as an antibiotic under item 907.20 of the tariff schedules of the United States.

Adriamycin is not presently in direct competition in the U.S. marketplace with any other domestically manufactured antineoplastic agents. In fact, it is often used to augment or supplement other forms of treatment, including use in conjunction with other antineoplastic drugs.

Because of the toxicity associated with Adriamycin, there is a limit on the amount of drug which can be administered to one patient. Adriamycin is an expensive drug; and, prior to the passage of the

first tariff suspension bill, Adria Laboratories committed itself to passing through to its customers the complete savings achieved by the tariff suspension.

And I might say that in a day when very often performance is not consistent with rhetoric this was done and the promise was kept and it was passed on through to the consumer. Various agencies and departments of the U.S. Government and State and local governmental purchasers have also benefited to the same extent as a result of the suspension of the tariff.

Government is the biggest buyer and hence the primary beneficiary.

The tariff suspension which was granted 2 years ago has lightened the financial burden of cancer patients through the reduced cost of Adriamycin and this will continue to be the case with an extension of that suspension. In addition, Federal, State and local governmental purchases will continue to be relieved of the burden of the tariff.

For these reasons, I respectfully urge the passage of this bill and the continued availability of the suspension of the tariff on this anti-cancer pharmaceutical compound.

Mr. VANIK. Mr. Schulze said OK, we will do it. Any questions?

Mr. GIBBONS. No questions. I don't think you will get any of us on the record as being for cancer.

Mr. EVANS. Thank you, gentlemen, very much indeed.

Mr. VANIK. Is Mr. Ford here?

Mr. GIBBONS. He is right here. He has been here all morning. His constituents are here.

Mr. VANIK. Mr. Ford, we are happy to have you here to give your statement and the statement of the others who are involved in this legislation, H.R. 6975.

STATEMENT OF HON. HAROLD FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. FORD. Thank you. I have with me Mr. Evans and Mr. Stadelman.

Mr. Chairman, I would like to thank you and the members of the committee for allowing me to appear this morning and to introduce one of my constituents and to talk about the legislation that is presently before this committee. Mr. Chairman, I welcome the opportunity to come before you and the members of the committee and to say that I introduced H.R. 6975 on March 31 of this year because I recognized the need for the import duties on these products to be eliminated.

This measure will be beneficial to U.S. industry and to the U.S. consumer. In these inflationary times we should make every effort to encourage industry to reduce the cost to the Nation's consumers whenever it is possible.

Eliminating the duty on hardwood veneers provides us with one such opportunity, Mr. Chairman.

Before the testimony begins by the two gentlemen who appear here with me I would like to talk a little about the legislation that I have introduced.

The domestic consumer is largely dependent on imports to fulfill his needs on many of these veneers. A duty elimination was accomplished in the context of the Multilateral Trade Negotiations for those wood

veneer items with a duty of 5 percent ad valorem or less, meaning where a negotiated duty elimination was legally possible.

However, due to the legal restraints of the Trade Act of 1974 these duty eliminations will not be completed until January 1, 1981.

The Trade Act also did not grant the President authority to eliminate duties which were greater than 5 percent. Thus, we could not eliminate the duties on wood veneers that are covered under this bill.

The proposed legislation is therefore the most expeditious way to accomplish the simultaneous elimination of the duties on veneers. Through passage of this legislation, Mr. Chairman and members of the committee, we are supporting an effort to favor our friends abroad and at the same time to eliminate the current shortage of high grade hardwoods, and ultimately to benefit industry and the consumer.

I would now like to introduce the first witness, Mr. Evans, and immediately after Mr. Evans to introduce Mr. Stadelman, who is my constituent from Memphis.

And again I would like to thank him and the members of his industry for their support of this most positive legislation. Hopefully this committee will take action very soon in reporting legislation out of this committee so we can go before the full House and pass this needed legislation.

Mr. VANIK. Well, Mr. Ford, as a member of the parent committee you make a very persuasive case. And we will be happy of course to hear from Mr. Evans at this time.

STATEMENTS OF O. KEISTER EVANS, EXECUTIVE VICE PRESIDENT, IMPORTED HARDWOOD PRODUCTS ASSOCIATION, AND RUSSELL C. STADELMAN, PRESIDENT, RUSSELL STADELMAN & CO., MEMPHIS, TENN.

Mr. EVANS. Thank you, Congressman Ford. My name is Keister Evans. I am appearing on behalf of the Imported Hardwood Products Association, where I serve as executive vice president. Appearing with me, as Congressman Ford has said, is Russell Stadelman from Memphis, a prominent member of our industry.

Also appearing, or supporting us, is Mr. Gerald E. Gilbert, a senior partner in the law firm of Hogan & Hartson. Mr. Gilbert serves as general counsel to the association.

Our trade association is an international trade association representing active importers, overseas suppliers, and allied industry members. A listing of our importing members is attached.

The imported hardwood industry and the domestic hardwood plywood industry have sought for some time to have duties removed from hardwood veneers.

As a matter of information, H.R. 6975, to eliminate the duty on hardwood veneers, covers a variety of imported veneers, the most important being Philippine mahogany, which is used for cores and backs of domestically manufactured hardwood plywood. The current duty on Philippine mahogany is 7 percent. Duties on the other categories in question range from 1 percent to 5 percent. A copy of the tariff schedule for these items is attached.

In extending our support for this legislation, we wish to bring to your attention the following points for consideration:

It is important to encourage the importation of hardwood veneers at reasonable prices since the U.S. supply of quality domestic hardwoods is not sufficient to meet the needs of the U.S. furniture, kitchen cabinet, and domestic plywood industry.

At a time when inflation is of primary concern to all U.S. citizens, the elimination of these duties should reflect positively our efforts to keep consumer costs down in the forest products industry.

A major consumer of imported hardwood veneers is the U.S. domestic hardwood plywood industry, which relies on imported veneers for the production of their product. In 1978, this industry produced 1.5 billion square feet of hardwood plywood. Lower costs of imported veneer will enable the hardwood plywood industry to keep costs and prices down which should reflect favorably in maintaining higher industry employment levels.

The Industry Sector Advisory Committee—ISAC 3—which served in an advisory capacity for lumber and wood products to the recently completed multilateral trade negotiations, recommended that these duties should be eliminated. Unfortunately, such action was not possible due to the legal restraints of the Trade Act of 1974.

H.R. 6975 has been drafted by the U.S. Department of Commerce and has the support of the administration. To our knowledge, there is no opposition to this bill.

We believe, Mr. Chairman, that H.R. 6975 is timely and appropriate, and that all implications of the legislation are positive.

We appreciate the opportunity to present our position to the subcommittee. Following Mr. Stadelman's remarks we will be happy to answer questions or provide additional information as you may require.

Now it is my pleasure to introduce to you a prominent long-standing member of the imported hardwood industry, Mr. Russell C. Stadelman. Mr. Stadelman is founder and president of Russell Stadelman & Co., headquartered in Memphis, Tenn. He is internationally recognized for his knowledge of the industry, especially Asian timbers. He is author of the book "Forests of Southeast Asia," which enjoys worldwide distribution and recognition.

Thank you.

[Attachment to the statement follows:]

SCHEDULE 2. - WOOD AND PAPER; PRINTED MATTER
Part 3. - Wood Veneers, Plywood, and Other Wood-Veneer Assemblies, and Building Boards

2 - 3 --
240.00 - 240.16

GSP	Item	Stat. Suf-fix	Articles	Units of Quantity	Rates of Duty		
					1	1/CC	2
			Wood veneers, whether or not face finished, including wood veneers reinforced or backed with paper, cloth, or other flexible material:				
			Not reinforced or backed:				
A	240.00		Birch and maple	.....	1% ad val.	Free	20% ad val.
		20	Birch (Betula spp.)	M.sq.ft.			
		40	Maple (Acer spp.)	M.sq.ft.			
A*	240.02	00	Philippine mahogany (almon (Shorea almon), bagtikan (Parashorea plicata), red lauan (Shorea negrosensis), white lauan (Pentacme contorta and P. siamensis), mayapis (Shorea philippinensis), tangile (Shorea polysperma) and tiaong (Shorea spp.));				
			meranti (Shorea spp.);				
			red seraya (Shorea spp.); and				
			white seraya (Parashorea spp.)	M.sq.ft.	7% ad val.	4% ad val.	20% ad val.
A	240.03		Other	.....	2% ad val.	Free	20% ad val.
		20	Hardwood	M.sq.ft.			
		40	Softwood	M.sq.ft.			
			Reinforced or backed:				
A	240.04		Decorative wood veneers, not face finished, or face finished with a clear or transparent material which does not obscure the grain, texture, or markings of the wood	.....	5% ad val.	3.2% ad val.	33-1/3% ad val.
		20	Hardwood	M.sq.ft.			
		40	Softwood	M.sq.ft.			
A	240.06		Other	.....	2% ad val.	Free	20% ad val.
		20	Hardwood	M.sq.ft.			
		40	Softwood	M.sq.ft.			

4/15/80

IMPORTED HARDWOOD PRODUCTS ASSOCIATION

Importing Membership

American Import Company
Long Island City, NY 11101

American Prefinish
Kirkland, WA 98033

American International
Hardwood Company
Stamford, CT 06902

Balmac Forest Products
(A Division of Balfour,
Maclaine Int'l, Ltd.)
New York, NY 10005

Bateman Brothers Lumber Co., Inc.
Philadelphia, PA 19125

Biwood International
Memphis, TN 38117

Boise Cascade Corporation
Portland, OR 97208

Borneo Sumatra Trading Company, Inc.
Rutherford, NJ 07070

Bryan Sales Company
Louisville, KY 40201

Pat Brown Lumber Corporation
Lexington, NC 27292

Budres Lumber Company
Grand Rapids, MI 49509

C. Itoh & Company (America) Inc.
New York, NY 10017

Cambrian Forest Products Inc.
Pensacola, FL 32573

Canadian Millwork, Inc.
Canadian, TX 79014

Cariboo-Pacific Corporation
Tacoma, WA 98411

Celta Agencies, Inc.
San Juan, PR 00936

Clarke Veneers & Plywood
Jackson, MS 39216

Craig Lumber Corporation
Memphis, TN 38112

Daewood Int'l (America) Corp.
Carlstadt, NJ 07072

DG Pacific (Div. of DG Shelter Products Co.)
Portland, OR 97225

Dean Hardwoods, Inc.
Portsmouth, VA 23707

Dillon Forest Products
Bordentown, NJ 08505

Drewry International
(Ply International Co.)
Louisville, KY 40218

Duratex North America, Inc.
New York, NY 10017

Froelich Company, The
High Point, NC 27261

Fronville Commercial Company, Inc.
Wilsonville, OR 97070

Frost Hardwood Lumber Company
San Diego, CA 92112

Fujilumco (America) Inc.
Los Angeles, CA 90017

GF Company, The
San Diego, CA 92117

Georgia-Pacific Corporation
Portland, OR 97204

Gross Veneer Sales, Inc.
High Point, NC 27262

Harlan Pacific, Inc.
Bellevue, WA 98009

Hermitage Wood Products
Nashville, TN 37205

Holland Southwest Corporation
Houston, TX 77033

Hunter Trading Division of
Balfour, Maclaine Int'l, Ltd.
New York, NY 10005

ICD Group, Inc.
New York, NY 10022

Insular Lumber Sales Corporation
Philadelphia, PA 19103

Interboard International Corp.
(Eucatex, S.A.)
Fort Lauderdale, FL 33394

International Wood Products, Inc.
Memphis, TN 38138

K & L International Corp.
Inglewood, CA

Kaibab Industries
Phoenix, AZ

Lane Stanton Vance Lumber Company
Industry, CA 91744

Litco (Leatherstocking International
Trading Company, Inc.)
Hartwick, NY 13348

John Lynn & Associates, Inc.
Eugene, OR 97402

Macbeath Hardwood Company
San Francisco, CA 94124

Maclea Sales Company, The
Baltimore, MD 21202

Mann & Parker Lumber Company, The
New Freedom, PA 17349

McCausey Lumber Company
Detroit, MI 48238

Alan McIlvain Company
Philadelphia, PA 19143

Mitsubishi International Corporation
New York, NY 10017

Mitsui & Company (USA), Inc.
New York, NY 10017

Moldingcraft Corporation
Bowling Green, VA 22427

Monroe Lange Hardwood Imports Division
(Macrose Industries Corp.)
Massapequa, NY 11738

Montclair Trading Inc.
Montclair, NJ 07042

Nickey Brothers, Inc.
Memphis, TN 38138

Northland Corporation
La Grange, KY 40031

Robert S. Osgood, Inc.
Los Angeles, CA 90020

O'Shea Lumber Company
Cockeysville, MD 21030

Overseas Hardwoods Company
Mobile, AL 36611

Pacific Wood Products Company
Carson, CA 90745

Pacsun International, Inc.
Torrance, CA 90502

Palmer & Parker Company, Inc.
Tewksbury, MA 01876

Pan Pacific Overseas Division
(Pan American Trade Development Corp.)
New York, NY 10016

Penberthy Lumber Company
Los Angeles, CA 90058

Ply*Gem Manufacturing Corporation
New York, NY 10022

Plywood Detroit, Inc.
Warren, MI 48089

Plywood & Door Manufacturers Corporation
Union, NJ 07083

Plywood Panels, Inc.
New Orleans, LA 70175

Price & Pierce International, Inc.
Memphis, TN 38118

Ralli Timber, Inc.
Tacoma, WA 98401

Robinson Lumber Company, Inc.
New Orleans, LA 70112

Samdari International Corporation
Portland, OR 97205

Southern Inc.
Wilmington, NC 28401

Russell Stadelman & Company
Memphis, Tn 38117

States Industries, Incorporated
Eugene, OR 97401

Sumitomo Corporation of America
New York, NY 10022

Sumwood, Inc.
Los Angeles, CA 90045

Stanton Swafford Company, Inc.
San Pedro, CA 90733

Swaner Hardwood Company, Inc.
Burbank, CA 91502

Swett International Corporational
Arcata, CA 95521

Transpacific Wood, Inc.
Burlingame, CA 94010

Tumac Lumber Company, Inc.
Portland, OR 97205

U.S. and Foreign Trading Corp.
Fort Lee, NJ 07024

United International, Inc.
Portland, OR 97231

Van Keulen & Winchester Lumber Co.
Grand Rapids, MI 49508

Vanply, Inc.
Charlotte, NC 28266

Welsh Forest Products, Inc.
Memphis, TN 38117

Wesco Sales Company
Stayton, OR 97383

Weyerhaeuser Company
Tacoma, WA 98477

Otto Wolff America Inc.
Houston, TX 77042

Wood International, Inc.
New York, NY 10016

Wood Markets
Portland, OR

Mr. VANIK. I would be happy to hear from Mr. Stadelman.

Mr. STADELMAN. My name is Russell C. Stadelman, president, Russell Stadelman & Co., Memphis, Tenn. We are delighted that Congressman Harold E. Ford of Tennessee has introduced the bill to eliminate the duty applied on hardwood veneers imported into the United States, which are predominantly from the Philippines and other developing countries in Southeast Asia.

I have been involved in the importation of hardwood veneers from Southeast Asia since 1947, and during that time have made approximately 30 trips to the Philippines and other countries of Southeast Asia. We are a small business of about 20 people, as are most of the other importers of these hardwood veneers. We maintain buying offices in Manila, Philippines, and Kuala Lumpur, Malaysia. There are less than 100 small companies engaged in the importation of these veneers.

The current shortage of high-grade hardwoods, which will undoubtedly accelerate in the future, can only be alleviated by the import of needed hardwood veneers from countries like the Philippines. These imports are not replacing domestic materials, but are badly needed to supply the needs of our hardwood plywood, furniture, and kitchen cabinet industry. These imports are needed by our domestic industry to provide employment in the further fabrication into finished products for the production of hardwood plywood, kitchen cabinets, furniture, and homes.

The present application of excessive duties by U.S. Customs indirectly results in higher cost hardwood plywood, furniture, and homes for the average U.S. citizen. While these duties are excessively high on Philippine mahogany or Lauan veneer, the duties on similar veneer from other countries is much lower or nonexistent.

We note the current efforts to give "most favored nation" status to some imports from former enemy nations. It appears that it would be about time that we support efforts to favor our friends, like the businessmen in the Philippines and other developing countries. This action will encourage our friends, result in lower costs for the U.S. consumer, and will be in the public interest. In the case of the forest products industry, whose average profit is less than 4 percent, the elimination of this duty is most important.

Thank you, Mr. Chairman.

Mr. VANIK. Thank you, Mr. Stadelman. Is there anyone here from the Brotherhood of Carpenters & Joiners? Well, that testimony will be admitted later.

Thank you very much. Mr. Frenzel?

Mr. FRENZEL. I just wanted to thank the witnesses for their excellent testimony. I have no questions.

Mr. VANIK. Any other questions? Thank you very much.

Mr. FORD. Thank you. Mr. Chairman, and members of the committee.

Mr. VANIK. Our next bill will be H.R. 7004. Mr. Schulze.

Mr. SCHULZE. Mr. Chairman, I have a statement which I would like to have included in the record in the interest of saving time.

Mr. VANIK. Without objection your statement will be admitted and made a part of the record, and we appreciate your cooperation.

Mr. SCHULZE. And I will be happy to answer any questions.

[The following was submitted for the record:]

STATEMENT OF HON. RICHARD T. SCHULZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

H.R. 7004, a bill which I have introduced, will suspend for 2 years the column one rate of duty on imports of tricot and raschel warp knitting machines.

Mr. Chairman, it is a well known fact that our domestic textile and apparel industries are too often placed at a competitive disadvantage to their foreign counterparts. It is a rare occasion, however, that this committee and the Congress has an opportunity to address this unfortunate situation. The passage of this legislation offers such an opportunity in pursuant of that goal.

Here is the situation now faced by a large number of domestic warp knit manufacturers. In order to remain competitive in domestic and world markets, these companies must acquire a new generation of warp knitting machinery which can only be purchased outside of this country. This is the case because there has been no domestic production of warp knit machinery since 1975. Yet, these companies must pay a current U.S. duty rate of 6.7 percent ad valorem on each machine they purchase from an MFN country. The burden of this duty is substantial considering that the highly sophisticated warp knit machinery, produced principally in West Germany, costs between $35,000 and $50,000 per unit.

Surely there can be no rationale for protecting a domestic industry with a tariff when no domestic production exists. Furthermore, it is clear that this latest generation of machinery is so far advanced that there is little likelihood of any U.S. machinery manufacturers reentering the field.

U.S. manufacturers of warp knit fabrics, which are located throughout the northeast and in the south, are among the most experienced and innovative in the world. They have concentrated on warp knitting and special finishing processes for fabrics which are used extensively in apparel, home furnishings, sporting goods and health care items. These companies produce for a highly competitive international market and must depend upon imaginative design and technical innovation in fabrication. The new generation of warp knit machinery incorporates some of the most significant technological innovations evidenced by warp knitting companies in many years. These new machines, for example, operate at double the speed of their predecessors and have greatly improved maintenance and repair performance.

I do not believe that U.S. firms should be penalized and placed at a competitive disadvantage by their own Government which imposes a tariff on equipment which is not manufactured domestically. This tariff inequity on warp knit machinery was, in fact, recognized during the recently concluded multilateral trade negotiations when it was decided to reduce the 7 percent tariff on these machines to 4.7 percent by 1987. While this was a small step in the right direction, it will do little to alleviate the immediate problem.

Suspending the U.S. column 1 rate duty for a period of 2 years would have several beneficial effects. This action would permit domestic textile firms to purchase the needed new machinery at a lower cost, thus assisting in making U.S. textile and apparel products more competitive in both domestic and foreign markets. In addition, removal of this tariff burden would be particularly beneficial to American consumers who ultimately pay for such tariffs in the form of higher prices for knitted textile and apparel products.

Finally, a more competitive U.S.-made product means that a warp knit company will be better able to increase its sales in both domestic and foreign markets. This will clearly have a beneficial effect upon domestic employment and upon our international balance of trade.

I urge the immediate adoption of this badly needed legislation.

Mr. VANIK. Do any of the members have questions to the statement of Mr. Schulze?

Mr. FRENZEL. I would like to ask the gentleman from Pennsylvania where the machines will be manufactured?

Mr. SCHULZE. The majority in West Germany. There are some in Romania and some in the United Kingdom.

Mr. FRENZEL. I thank the gentleman. I have no further questions.

Mr. VANIK. At this time we will be very happy to hear from Mr. Lee Rosenberg of the Knitted Textile Association. Your entire statement will be admitted into the record as submitted. You may excerpt from it as you choose.

STATEMENT OF SIDNEY KORZENIK, COUNSEL, KNITTED TEXTILE ASSOCIATION

Mr. KORZENIK. Mr. Chairman, my name is Sidney Korzenik, counsel for the Knitted Textile Association. May I, with your permission, speak instead of Lee Rosenberg, who asked to be excused because he is unable to be here.

Mr. VANIK. You may proceed. Your full name is?

Mr. KORZENIK. Sidney Korzenik, counsel for the Knitted Textile Association.

I should like at the outset to thank the committee for this opportunity to appear and express our support for H.R. 7004 which would suspend all column 1 duties on the importation of tricot and raschel warp knitting machinery until July 1 of 1982.

The Knitted Textile Association is the national trade association devoted exclusively to the interest of the producers of knitted fabrics. I will limit my presentation to just some significant excerpts from the statement, which I will take it will be included in toto in the record.

Approximately 40 percent of all apparel is made of knitted fabric. Manufacturers of warp knit fabrics represent one sector of the knitted fabric industry. They are the ones who purchase and operate the kind of machinery on which duties will be temporarily eliminated under H.R. 7004.

The fabric which they produce on such equipment represents about 30 percent on a dollar basis of the Nation's total output of knitted fabrics.

All warp knit fabric production experienced substantial growth during the 1970's. This recent growth and the potential for further expansion of production facilities would be encouraged if plant investment were now assisted by machinery cost reduction through tariff elimination on the types of equipment these producers need.

It would also help enhance their efforts to export warp knit fabrics.

Regrettably though it is, the production of tricot and raschel knitting machinery in the United States is now at absolute zero. Today there is no American machinery industry to be protected by the tariffs on tricot or raschel machinery. There has been none for several years, and there is no likely prospect that any such industry will be reestablished here within the foreseeable future.

The world's production of tricot machinery is now centered in West Germany. In that country there are two primary sources of such equipment: Karl Mayer and Liba. A third producer of such machinery is located in East Germany and is here mentioned only for the sake of completeness, though it has no significance at all in our market and not much elsewhere.

So as a practical matter, virtually all of the machines which American manufacturers of tricot or raschel knitted textiles may require must come from West Germany. The risks and burdens of capital investment undertaken by management in the face of present economic

uncertainty ought not to be aggravated by the imposition of remaining import duties which are now a relic of the past and no longer have any current raison d'etre.

In acting to suspend duties your committee would be offering an opportunity for assisting approximately 220 tricot and raschel mills in the United States employing about 23,000 men and women and with an annual payroll of about one-quarter of a billion dollars. Wrap knit production of both kinds is conducted primarily in North Carolina, Pennsylvania, New York, and South Carolina, which together account for 73 percent of the industry's employment, though other plants are located elsewhere in areas commonly identified with textiles.

It is difficult in these days of rampant inflation to find ways of reducing costs and prices in any product area. H.R. 7004 provides an opportunity to do so directly by reducing machinery costs and indirectly by encouraging capital investment and improving the supply side of the basic economic equation. It is a means of extending benefits to consumers of a wide range of end products.

Most tricot is used in apparel. Products of raschel equipment are more diversified, including outerwear fabrics, curtain fabrics, laces, thermal underwear, upholstery, and others.

No disadvantage to any American interest can conceivably follow. This measure, moreover, would affect only a provisional suspension of duties—operative for only 2 years. Considering the problems involved in advance planning by management, especially in capital expenditures, 2 years are a rather short period. We would like to see it extended in the present bill to 5 years. But we are grateful to Congressman Schulze for having introduced H.R. 7004. This bill has our warm endorsement. We respectfully request that it be given yours.

[The prepared statement follows:]

STATEMENT OF THE KNITTED TEXTILE ASSOCIATION

In behalf of the Knitted Textile Association, I wish to thank the Committee for this opportunity to appear here and to express our support for H.R. 7004 which would suspend all Column 1 duties on the importation of tricot and raschel machinery until July 1, 1982. We hope that this bill will be found to merit your approval.

PROFILE OF KNIT FABRIC INDUSTRY

The Knitted Textile Association for which I speak is the only national trade association devoted exclusively to the interests of producers of knitted fabrics sold as piece goods for apparel and other end uses. This group represents a significant sector of the nation's textile industry, its total product being valued at the manufacturers' level at approximately $5 billion. That total, in terms of weight, comes to about 1.7 billion pounds annually, including goods produced by vertical mills consuming their own fabric. To put this entire field in perspective, it may be pointed out that knitted fabrics account for approximately 40 percent of all piece goods consumed in the production of apparel.

The knitted fabric total includes, of course, a great variety of types. Manufacturers of warp knit fabrics, both of tricot and rasche, are the ones who purchase and operate the kinds of machinery on which duties would be temporarily eliminated under H.R. 7004. The fabric which they produce on such equipment represents about 30 percent on a dollar basis of the nation's total output of knitted fabrics; and since these fabrics are commonly lighter in weight than most other knitted fabrics, they account for nearly 25 percent on a poundage basis.

The tricot component of the warp knit sector is substantially larger than the raschel, its product being more than five times as great. But all warp knit fabric

production experienced substantial growth during the seventies. According to the 1977 Census of Manufacturers this branch of the textile industry registered a rise of 58 percent in production over the level recorded in the 1972 Census. Since 1977 tricot, it is estimated, has increased by an additional 5 or 6 percent. This recent growth in tricot production as well as raschel and the potential for further expansion of production facilities would be encouraged if plant investment were now assisted by machinery cost reduction through tariff elimination on the types of equipment these producers need.

NO DOMESTIC TRICOT OR RASCHEL MACHINERY

For, regrettable though it is, the production of tricot and raschel knitting machinery in the United States is now at absolute zero. Indeed, there has been no such machinery industry in the United States for about a decade, except for the effort made by North American Rockwell a few years ago to revive such production by introducing its spun-warp model, a tricot machine with a latch needle designed to produce fabric with spun yard instead of filament yarn only. But that attempt failed and North American Rockwell abandoned the production of tricot machinery in 1975, the last American enterprise in that field. Today there is no American machinery industry to be protected by the tariffs on tricot or raschel machinery. There has been none for some years. And there is no likely prospect that any such industry will be reestablished here within the foreseeable future.

THE MACHINERY INDUSTRY ABROAD

The world's production of tricot machinery is now centered in West Germany. In that country are the two primary sources of such equipment: Karl Mayer and Liba. A third producer of such machinery, Textima, is located in East Germany and is here mentioned only for completeness, though of the thousands of such machines used in the United States today, it is judged that perhaps not more than 25 came from that last-named source. There had been a Japanese enterprise turning out machinery for producing raschel lace but this did not prove successful here and the West German concern of Karl Mayer is reported to have acquired an interest in that Japanse unit which is now limited, it is said, to the domestic market in that country.

Thus, as a practical matter, virtually all the machines which American manufacturers of tricot or raschel knitted textiles may require must come from West Germany. The risks and burdens of capital investment undertaken by management in the face of present economic uncertainty ought not to be aggravated by the imposition of remaining import duties which are now a relic of the past and no longer have any current raison d'etre.

IMPORTS OF MACHINERY

Unfortunately, data on imports of tricot and raschel machinery are lacking. Government reports are not of much help because these particular types of equipment are included in a catch-all classification (described as other than circular or V-bed flat machines). Inasmuch as this miscellaneous category includes presumably a large proportion of relatively inexpensive hand-operated knitting machines, the number of units reported is not significant for our purposes. But it is probably that tricot and raschel machines represent a far greater proportion of the total dollar value of such imports and the dollar figures for this classification rose from $4.6 million in 1975 to $9.3 in 1976; then reached $8.2 in 1977 $17.8 in 1978, and $15.9 last year.

BENEFITS OF DUTY SUSPENSION

In acting to suspend duties, your Committee would be offering assistance to approximately 220 tricot and raschel mills in the United States employing about 23,000 men and women and with an annual payroll of about a quarter of a billion dollars. Warp knit production of both kinds is conducted primarily in North Carolina, Pennsylvania, New York and South Carolina which account for 73 percent of the industry's employment though other plants are located elsewhere in areas identified with textiles.

Of this number, 100 mills now operate 6,260 tricot machines in the United States. These figures are based on a survey made at the end of 1977 and are believed not to have been significantly changed since then. Incidentally, the

membership of the Knitted Textile Association, we estimate, represents close to 80 percent of the total national output of tricot fabric.

On the raschel side of the warp knit area there are approximately 120 mills, many of them small, operating about 4,200 raschel machines.

Tricot is consumed for the most part in apparel, but now to an increasing extent is finding application in home furnishings and in industrial uses. The products of the raschel machine are more diversified including outerwear fabrics, power net and other nettings, curtain fabrics, laces, thermal underwear fabric and upholstery, among others.

It is difficult in these days of rampant inflation to find ways of reducing costs and prices in any product area. H.R. 7004 provides an opportunity to do so directly by reducing machinery cost and indirectly by encouraging capital investment and improving the supply side of the basic economic equation. It is a means of extending benefits to consumers of the wide range of end products already referred to.

No disadvantage to any American interest can conceivably follow. This measure, moreover, would effect only a provisional suspension of duties—operative for only two years. Considering the problems involved in advance planning by management, especially in capital expenditure, two years are a rather short period. We would like to see it extended in the present bill to five years.

We are grateful to Congressman Schulze for having introducer H.R. 7004. The bill has our warm endorsement. We respectfully urge that it be given yours.

Mr. VANIK. Thank you very much. Mr. Warshow, we would be very happy to hear from you. Your entire statement will be submitted in full for the record. You may excerpt it or proceed as you like.

STATEMENT OF ALAN W. WARSHOW, ON BEHALF OF THE NORTHERN TEXTILE ASSOCIATION, ACCOMPANIED BY KARL SPILHAUS, EXECUTIVE VICE PRESIDENT

Mr. WARSHOW. Thank you, Mr. Chairman. My name is Alan W. Warshow, and I am testifying on behalf of the Northern Textile Association of Boston, Mass., which represents textile manufacturers located principally in the Northeast and also in various other parts of the country.

I am a director of the association and serve as chairman of its Elastic Fabric Manufacturers Council, an organization of companies which include the principal producers of warp knit elastic fabrics. I am also chairman of H. Warshow and Sons, a manufacturer of warp knit elastic fabrics headquartered in New York City, with plants located in Milton, Pa., and Tappahannock, Va. I am accompanied by Mr. Karl Spilhaus, executive vice president of the Northern Textile Association.

Members of the Northern Textile Association strongly support H.R. 7004, introduced by Congressman Schulze, which would suspend the current column 1 rate of duty on tricot and raschel warp knitting machines.

We believe that there is no longer a need for a tariff to be imposed on the imports of these machines because there has been no production of the machinery in this country for the last 5 years.

During this period of time significant advances have been made by foreign manufacturers of this equipment which have resulted in the availability of a new generation of machinery which will enable warp knit fabric mills, such as my company, to produce a more competitive product for both domestic and world markets.

The most recent U.S. Census of Manufacturers provides an idea of the size of the warp knit sector of the textile industry. In 1977, 233

warp knit fabric plants located throughout the country employed 23,000 persons with a combined payroll of $226 million. Today many of these firms manufacture products for export as well as for domestic consumption.

While it is difficult to ascertain the number of tricot and raschel warp knitting machines now in use by these mills, we estimate that approximately 7,500 machines are being used in the production of all warp knit fabrics. The elastic fabric segment represents about 15 percent of the entire warp knit industry.

The existing U.S. duty on these machines places our domestic warp knit mills at a severe competitive disadvantage with our foreign competitors. If we purchase these machines, many of which sell at over $60,000 per unit, we are penalized by the duty which, of course, must be reflected in the ultimate price of the product in the marketplace. On the other hand, if we do not purchase the new equipment our products will not benefit from the design and manufacturing flexibility offered by the new generation of equipment.

This problem was recognized during the recently concluded multilateral trade negotiations and the duty on tricot and raschel machines has been scheduled for a phased-in reduction from 7 percent in 1979 to 4.7 percent by 1987.

This step, however, provides little relief and we firmly believe that there is simply no basis for any tariff whatsoever in view of the absence of any domestic manufacturer of this machinery.

I would also like to point out that given the current state of the art, it would take a minimum of 5 years for a new U.S. machinery manufacturer to bring equipment on line which would be competitive with the latest foreign-produced machines.

Technological development in this area is cyclical and the new phase now underway in Europe makes it highly unlikely that a U.S. manufacturer would undertake the expensive long-term commitment that would be necessary to produce a competitive machine.

For this reason we recommend to the subcommittee that the 2-year suspension provided by H.R. 7004 be changed to 5 years. This would allow companies to begin their necessary equipment replacement programs over a more extended period of time.

In summation, we believe that enactment of H.R. 7004 will be beneficial to American manufacturers and consumers. Suspending the duty will encourage U.S. firms to replace outmoded equipment thus enabling our products to be more competitive in both domestic and foreign markets.

Purchasing the new equipment without the penalty of a tariff will also mean that a greater variety of products will be available to consumers.

Finally, purchases of these machines will stimulate both employment and exports.

We believe that these considerations require removal of a tariff which no longer serves the purpose for which it was intended. We therefore respectfully urge the subcommittee to favorably recommend H.R. 7004, with the modification I have suggested, to the full committee.

Thank you for this opportunity to present our views.

Mr. VANIK. Any questions?

Mr. FRENZEL. Mr. Chairman.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, one of the witnesses suggested a 3-year bill and one of them a 5-year bill. I think this committee does not usually like to go 5 years. The bill, however, is 2 years. And I would simply ask the author if he would be interested in extending it to 3 years, which is the maximum time that we usually permit.

Mr. SCHULZE. Since there has been no objection to this bill, I would certainly think it would be in order to extend it to 3 years. As has been stated by the witnesses this would increase productivity and aid the textile industry in the most effective way. I would be happy to accept such an amendment.

Mr. VANIK. We will take that up in markup.

Mr. FRENZEL. I think it is necessary. It is a pretty big ticket item.

Mr. VANIK. Mr. Russo.

Mr. RUSSO. Mr. Chairman, I just have a question for the panel. Why hasn't there been a production of the warp knitting machinery since 1975?

Mr. WARSHOW. Well, the reason has been that all the American manufacturers who made this machinery have stopped doing it. You cannot buy these types of machines in the United States. The American manufacturers 8 or 9 years ago decided they had very good equipment, and they did nothing about any modernization. What wound up happening is that the foreign manufacturers came in and began to make these machines, and they were much more efficient. And the American manufacturers just almost literally capitulated. They didn't even attempt to stay in business.

We would prefer obviously to be buying the machines in the United States. Originally 15 years ago we didn't have a foreign machine in our place. Everything was American in our place.

Mr. RUSSO. How many U.S. companies made this machinery prior to 1975?

Mr. WARSHOW. I would say probably my guess would be maybe three or four.

Mr. RUSSO. And are they all still in business making other machines?

Mr. WARSHOW. Some are out of business and some are making other types of textile machinery. Two are out of business completely and two are in other ends of textile machinery manufacturing.

Mr. VANIK. Thank you. We certainly appreciate your testimony.

Mr. SCHULZE. I would like to thank the witnesses for their excellent testimony and express our gratitude for their taking this time to come down here and give us their views.

Mr. WARSHOW. Thank you for inviting us.

Mr. VANIK. Thank you. We will consider Mr. Schulze's request for a 3-year bill when we get into markup.

Mr. Nichols, we will be happy to hear your testimony now in connection with H.R. 6975. You are general treasurer, I understand, of the United Brotherhood of Carpenters and Joiners. Your entire statement will be submitted for the record. You may read or excerpt from it.

STATEMENT OF CHARLES E. NICHOLS, GENERAL TREASURER, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Mr. NICHOLS. Thank you, Mr. Chairman, and members of the committee. My name is Charles Nichols. I am the general treasurer and director of legislation of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO. I testify as the representative of the largest labor organization representing employees in the forest products industry in the United States and Canada.

We have approximately 800,000 members, with over 200,000 of our members employed in the lumber, plywood, and wood products industry and 4,000 workers in the hardwood plywood industry.

We oppose the elimination of duties on wood veneers, as proposed in H.R. 6975. We believe that duty-free status for these items, particularly for TSUS 240.02, Philippine mahogany veneer, will lead to job loss in the hardwood plywood industry. We also oppose this bill because we feel that inadequate consideration has been given to the potential employment effects of the legislation.

When we learned of this bill, we contacted the Government agencies that are represented here today to see if any of them had looked into the employment effects of the bill. None of them had.

The Bureau of International Labor Affairs of the Labor Department had the responsibility to investigate the employment effects of the proposed legislation that deals with international trade. When we contacted ILAB we learned that this agency had not conducted an independent investigation or looked into the potential employment effects of this bill.

In the absence of such investigation, we contacted our most experienced representative in the hardwood plywood industry who represents almost 1,000 members in this industry in the Northern Midwest. He felt that the increased imports of mahogany veneer would lead to job loss among employees he represents. The cores of hardwood plywood in that area of the country are not made from mahogany. They are made from the same type of domestic hardwood, but of a lower grade, as is used in the face ply.

Thus, if mahogany veneers were readily available because of reduced tariffs, they are likely to replace the domestically produced core and thereby cause job loss among his members. It seems to us, therefore, that in at least one area of the country the elimination of the tariff on mahogany veneer from 7 percent—already to be reduced to 4 percent in 1981—to zero, would cause significant job loss.

There is already a substantial amount of Philippine mahogany veneer alone coming into this country under the present 7-percent tariff—$22.7 million in 1979. We are concerned about the employment impact that is likely to result if the tariff were eliminated and a significant increase in imports took place.

We are more broadly concerned that the administration has not presented this committee with adequate information concerning employment impact and has not apparently undertaken to prepare such data on a uniform basis for the forest products industry.

When workers are laid off in this country and application is made for trade adjustment assistance benefits, the Labor Department conducts a detailed investigation to determine if imports were invloved in the employment loss. Customers of the affected company are surveyed to see if they substitute foreign goods for the domestically produced item. If a determination is made that imports were involved in the employment loss, the affected workers are eligible to apply for weekly trade adjustment assistance benefits.

In contrast, when legislation is proposed to change the terms under which imports enter this country in the first place— legislation such as the bill we are considering today, which will we believe cause import related employment loss in the industry—no such investigation takes place.

It seems that we have to wait until after people lose their jobs because of imports before we look into the relationship between imports of a particular item and the American jobs it might displace.

We urge that before trade related legislation is considered—on this bill and in the future in the forest products industry—that the employment effects of such bills be investigated. At present this is simply not done. In the case of the wood products industry such an investigation is critical.

The employment situation in the plywood and lumber industry, as I am sure you all know, is very, very bad because of the major downturn in construction in the United States. We have no assurances that this bill will not further worsen the situation.

We have seen how in many industries—autos, steel, rubber, footwear apparel—foreign imports have devastated U.S. employment. The U.S wood products industry should not be allowed to suffer a similar fate.

To make sure this does not happen we urge that all legislation dealing with foreign imports in the industry be given careful consideration in terms of its impact on U.S. human and natural resources.

We oppose this bill because such consideration has not been given, and because we believe that increased imports of veneer, particularly of mahogany veneers, would lead to job loss in the industry in numerous plants in Minnesota and Wisconsin.

Thank you.

Mr. GIBBONS. Mr. Frenzel.

Mr. FRENZEL. No questions.

Mr. GIBBONS. Mr. Guarini.

Mr. GUARINI. No questions.

Mr. GIBBONS. The next witness is Congressman Weaver to testify on H.R. 5442.

STATEMENT OF HON. JAMES WEAVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WEAVER. Thank you, Mr. Chairman, and members of the subcommittee, for scheduling consideration of H.R. 5442. This bill will convey three amphibious craft confiscated from a drug smuggling operation to the Coos County Sheriff's Office for emergency work. These craft are now being stored down in Bandon, Oreg., and we ask that they be turned over to the Coos County Sheriff's Office.

I would ask unanimous consent the rest of my statement be placed in the record.

Mr. GIBBONS. We will put your entire statement in the record and we appreciate your coming.

[The prepared statement follows:]

STATEMENT OF HON. JAMES WEAVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

I want to thank the Chairman, Mr. Vanik, and the members of the Subcommittee for scheduling consideration of H.R. 5442. This bill will convey three amphibious craft confiscated from a drug smuggling operation to the Coos County Sheriff's office for emergency rescue work.

On December 31, 1977, three lighter amphibious re-supply cargo vehicles (LARC's) were seized during a drug raid conducted on that date by officers of the Coos County Sheriff's Office and the U.S. Customs Service. The LARC's were used to transport some seventeen tons of marijuana from the foreign registered ship Cigale to the Oregon coast. During the legal prosecution of this case the U.S. District Court of Oregon ruled that the individuals who were in possession of these vehicles at the time of the raid, had no further claim to them. By court order the title to these vehicles was transferred to the Department of the Treasury which in turn had them stored at Boston's Wrecker Service in Bandon, Oregon.

The vehicles in questions are as follows:

U.S. Army LARC #5-584, Stock #1930-710-5728, Built, Feb. 1965
U.S. Army LARC #5-834, Stock #1930-710-5728, Built, Aug. 1967
U.S. Army LARC #5-33, Stock #1930-710-5728, Built, Mar. 1963

Boston's Wrecker Service is storing the vehicles and attempting to maintain them in good running order. At this time one of the vehicles is inoperable. To date approximately $7,000 in storage and maintenance charges have accrued.

Sheriff Miller approached me nearly 18 months ago and asked for my assistance in obtaining these vehicles for rescue work by his department. After ten months of work by my district office and the Portland Customs Office it was evident that administrative remedy was not possible in this case. Treasury regulations prohibit such an administrative transfer. At the request of Sheriff Miller, I introduced H.R. 5442, to permit the transfer of these vehicles.

The U.S. Customs Service in Portland, Oregon is anxious to either convey the vehicles to Sheriff Miller's office, or to offer the vehicles at public auction. It is my understanding that additional storage and transportation costs would be incurred if these vehicles were to be moved to Washington State for auction. These costs in addition to the more than $7,000 in storage costs already accrued would have to be paid by any potential purchaser. To date, no one other than Sheriff Miller has indicated any interest in these vehicles. Given the age and rather limited applicability of LARC vehicles in legitimate usage it is unlikely that much, if any, demand could be created at auction.

Sheriff Miller has jurisdiction over a large coastal county with many miles of estuary and river frontage. As my colleagues know, it rains a great deal in Oregon, especially along the coast! Coos County is often subject to flooding in the winter months. The sheriff is anxious to have use of the LARC's for rescue during times of flood and other routine official duties pertaining to patrolling and maintaining the many miles of waterway over which his office has jurisdiction.

I strongly support the Sheriff in his desire to provide rescue and other services with the vehicles. I believe that the transfer of these vehicles would be cost-effective or perhaps even cost-saving to the federal government. I urge my colleagues to provide favorable consideration of H.R. 5442.

Thank you.

Mr. GIBBONS. The Chair will next go to H.R. 5452, offered by Mr. Stanton of Ohio, to permit products of U.S. origin to be reimported into the United States under informal customs procedures.

We also have Mr. Arthur Armington here with us, and Mr. Wolford.

STATEMENT OF ARTHUR P. ARMINGTON, PRESIDENT, MENTOR RADIO CO., WILLOUGHBY, OHIO

Mr. ARMINGTON. Thank you, Mr. Chairman. My name is Arthur Armington. I represent the Mentor Radio Company of Willoughby, Ohio. I guess it was thought Congressman Stanton would be here. In his absence, it has been suggested that I ask that a statement he was to submit be made a part of the record.

Mr. GIBBONS. I should have said that. Mr. Stanton is a good friend of this committee and a good friend of mine. He is not able to be present at this time. We will place his statement in the record at this point.

[The following was submitted for the record:]

STATEMENT OF J. WILLIAM STANTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman: It is a great pleasure for me to appear before you today in support of H.R. 5452. The members of the Committee would be interested to know that the bill was re-introduced yesterday with Congressman Richard Schulze as a co-sponsor.

I know I do not need to lecture this Committee on the importance of trade to U.S. business and labor and to our balance of payments. In an era of unprecedented balance of payments deficits, unemployed resources at home and an unstable dollar abroad, increasing our sales abroad has become one of this country's most important priorities. Yet, it is easy to cite numerous instances where our law or policy acts to frustrate attempts to improve U.S. export performance. Exporters are faced with an array of restrictions on where and how they can sell their products abroad. Often times these restrictions are well intended and are aimed at fulfilling important national and foreign policy goals. But the sum total of their impact has been a significant negative effect on the U.S. balance of payments and on the performance of our export industries.

One such problem has resulted from a service-after-sale situation. The bill before you is an attempt to deal with this problem. Take for example the case where a piece of equipment is shipped by the foreign purchaser back to the American manufacturer for service, or modification. When the shipment reaches U.S. port, Customs holds the shipment pending the payment of duty or a determination that no duties apply. If Customs had the manpower to inspect the shipment of American-made equipment, they would conclude no duties were owed since duties are not applied to goods of U.S. origin, and the shipment could be released to the importer immediately. This, however, is not the situation.

Due to the enormous workload (and due to the absence of any legal basis for varying these entry procedures), Customs holds virtually all shipments—even shipments where no duties would apply—until a formal application for their release is filed and approved. This inevitably involves considerable time and can involve the expense of hiring a customs broker or other fees. To a small U.S. exporter who is interested in giving his foreign customers quality service for his equipment, this delay and expense incurred by the foreign buyer can lead to the loss of the sale. That is bad for the company as well as the country.

The purpose of this bill is simple. It would amend U.S. Customs law to permit products of U.S. origin to be re-imported into the United States under informal Customs procedures. If adopted, this amendment should eliminate a needless burden and expense on purchasers of U.S. products while not resulting in any loss of revenues to the Treasury. My staff and I worked informally with Customs in the drafting of this bill, and I know of no opposition to it.

I appreciate the opportunity to address the Committee and hope that you will be able to act expeditiously on it.

Thank you.

Mr. ARMINGTON. As I said, my name is Arthur Armington, and I am representing the Mentor Radio Co. in Willoughby, Ohio, a suburb of Cleveland.

I appreciate this opportunity to speak to a problem in international trade for which we think there could be a better answer. Very likely, others would share our interest.

My company, Mentor Radio Co., is a small electronics manufacturer. Our market is both domestic and export.

There is a Government-mandated obstacle to foreign use of our American-made product. This arises in a servicing-after-sale situation where the user elects to temporarily return the product for modification and then must ultimately pay for brokerage assistance for formal customs entry back into the United States. These fees, though only $80 to $150 or so in our case, so far, may be sizable in relation to the modest but technical work required, or to a depreciated value of the goods. Some of our overseas users would find this added cost intolerable. Fortunately, to date, by sheer luck, some have avoided the problem. However, we hope to have more foreign customers, and would like to head off this costly annoyance, and its damaging effect on our export sales.

This bill, H.R. 5452, would amend U.S. customs law to permit products of U.S. origin to be reimported into the United States under informal customs procedures for purposes of servicing prior to reexport. The bill includes a $10,000 limit on value of the shipment which is probably sufficient at this time. If adopted, this amendment should eliminate a needless burden and expense on purchasers of U.S. products while not resulting in any loss of revenues to the Treasury.

We ask that Congressman Stanton's full statement of introduction of this bill on September 27, 1979, be included as an extension of our statements.

Thus, we respectfully ask for adoption of H.R. 5452.

[The prepared statement follows:]

STATEMENT OF ARTHUR P. ARMINGTON

SUMMARY

We support the proposed legislation as a means to overcome a small but annoying impediment to U.S. exports. We believe the legislation involves no cost as no duties are imposed or removed.

STATEMENT

I appreciate this opportunity to speak to a problem in international trade for which we think there could be a better answer. Very likely others would share our interest.

My company, Mentor Radio Company, is a small electronics manufacturer. Our market is both domestic and export. There is a government mandated obstacle to foreign use of our American made product. This arises in a servicing-after-sale situation where the user elects to temporarily return the product for modification, and then must ultimately pay for brokerage assistance for formal customs entry back into the U.S.A. These fees, though only $80 to $150 or so in our case so far, may be sizable in relation to the modest but technical work required, or to a depreciated value of the goods. Some of our overseas users would find this added cost intolerable. Fortunately to date, by sheer luck, some have avoided the problem. However, we hope to have more foreign customers, and would like to head off this costly annoyance, and its damaging effect on our export sales.

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We ask that Congressman Stanton's full statement of introduction of this bill on September 27, 1979 be included as an extension of our statements. Thus, we respectfully ask for adoption of H.R. 5452.

EXAMPLES OF OUR EXPERIENCE

1. Return from Toronto of an 8 year old glider radio. When formal entry procedure was indicated, we checked our broker who upon evalaution agreed brokerage and forwarding fees would be a large part of the owner's costs of obtaining factory service. He suggested we refuse shipment and let it return to the owner for reshipment with a slightly lower declared value, thus enabling informal entry, and delivery directly to us.

2. A quantity of equipment was returned by a Canadian Armed Forces group for factory modification. We had to invoice this customer for costs of formal entry—on at least two occasions.

3. In a few instances, we have been able to convince a customs representative of the nature of the temporary reimportation for service, of an item of used equipment of American origin; resulting in his discretionary judgment to release the material. Other officials are unwilling to exercise such discretionary judgment.

4. In one instance a reimportation occurred through a different U.S. port of entry, arriving at our plant just as any domestic shipment. The declared value should have dictated formal entry.

Mr. GIBBONS. Thank you, sir. Next we will hear from Mr. B. F. Wolford, president of Proximity Controls.

STATEMENT OF B. F. WOLFORD, PRESIDENT, PROXIMITY CONTROLS, INC., FERGUS FALLS, MINN.

Mr. WOLFORD. Thank you, Mr. Chairman. I am in general agreement with Mr. Armington's statements. We have had our difficulties with the reentry of goods shipped beyond the borders. We have noted in the single page of H.R. 5452 that we received that the provisions were primarily for the repair and modification prior to reexportation. The comments I have to make are pretty much limited at the moment in a summary:

First, to permit reentry in as simple a manner as possible as is suggested in H.R. 5452, which provides for informal customs reentry.

But in paragraph 2, at the bottom of the page that we received. mention is made of merchandise of U.S. origin when the aggregate GATT value of the shipment does not exceed $10,000. And when the merchandise is imported for the purposes of repair or modification prior to exportation, that you might consider including shipments of U.S. origin ordered in error and being returned for credit.

And this generally represents my concern on the matter.

I appreciate the privilege of presenting my views. Thank you.

[The prepared statement follows:]

STATEMENT OF B. F. WOLFORD

Thank you, Mr. Chairman, It is a privilege to appear before your committee today and to relate certain experiences we have had in exporting our products. My immediate concern in appearing before you is related to the re-entry of U.S. manufactured goods back into the United States—this would normally mean product shipped in error beyond our border or damaged enroute. I refer to H.R. 5452 currently before you.

During the past year we have had a rather "awkward" experience with the re-entry of a Canadian shipment. I would like to tell you the story, but I believe the first thing I should do, before delving into matters related to the U.S. Customs Service, is to impress upon you the fact that I represent small business

in the truest sense of the word. Let me give you a bit of background about our company, for I believe this will be of help in understanding the difficulties we have encountered in the re-entry of product back across the border.

Proximity Controls, Inc., was organized in 1966 as a manufacturer of industrial instruments and controls. Located 180 miles northwest of Minneapolis in Fergus Falls, Minnesota, the company has 14 employees. We hold five domestic and foreign patents and are presently producing three control devices. The original product developed in 1966 is now found on most all of the world's offshore drill rigs. Also, some 450 units were specified by Russian engineers for the heavy truck plant as Kama River—rumored to be the source of military trucks now in Afghanistan. We are presently operating at about a $900,000 annual volume—rather insignificant you might say—but for you members of the Ways and Means Committee, our December 31, 1979, statement showed a 27.6 percent net profit before tax.

At present our sales are distributed as follows: 88 percent domestic; 5.6 percent Canada; 6.2 percent Europe, England, Africa, Malaysia, etc.

We sell product wherever we find a willing buyer, but we prefer to go where we find the utmost in: ease and convenience in selling where money is relatively certain, where incidentals such as crating, insurance, and handling and freight details are at a minimum, where time is not "stretched out," where regulations favor easy entrance and exit of our product.

For practical purposes, this would eliminate overseas sales, for there is a lot of additional work in exporting. Yet, at the moment, we welcome overseas sales and feel fortunate, for an expanding export market combined with a new product may take up whatever slack develops in the domestic economy in 1980–81. We are trying hard to appeal to the foreign buyer by offering prompt delivery, by minimizing his costs, and by quoting CIF, a price delivered to his airport. By so doing, the buyer immediately knows the cost of our product laid down at his airport. To marketing people, this is extremely important, for buying decisions in America and overseas are not made until a delivered price is established. So, we are bullish about exports and we intend to improve our position. Incidentally, our distributor discounts in export are 5 percent less than is the case in domestic sales—we do get paid for the extra effort.

Now the problem at hand—the re-entry of goods shipped in error beyond our border. A year ago, June 1, 1979, we made a shipment in error to the Canadian National Railway at Winnipeg, Manitoba. The invoice was only for $500. Thirty days later, June 28th, our office received a phone call from a custom's broker in Minneapolis asking for $67 to process the documents and to post bond necessary to return the shipment to Fergus Falls, at the same time advising that unless we had a check in their hands within 48 hours, we would be assessed a $48 fee for storage—this in addition to motor freight. The information was documented for me in total in a typed note from the secretary who took the call.

When I returned to the office, rather than call the broker, I called the U.S. Customs Office in Minneapolis and was referred to a specialist on a re-entry procedures. His advice was as follows: that the shipment undoubtedly was being held by Customs 200 miles away; that if we were to act on our own behalf in the matter, it would be best for us to appear in person; that the documentation was difficult for a layman to understand; that it would be necessary to post bond, presumably equal to the invoiced price; that a broker was the logical party to handle the transaction—in essence, pay the fee and forget it.

I was a bit disturbed by the conversation. I immediately wrote to Congressman Frenzel explaining the circumstances surrounding the shipment and forwarded a copy to Congressman Stangeland.

Our product was well identified with labels on the shipping cartons, shipping tickets included an stainless steel name plates fixed to each casting with drive pins. The details involved in re-entry seemed too excessive and so the shipment still remains with Customs—we have yet to retrieve it. It serves as a remainder that from our point of view something is wrong with the regulations that provide for the return of our product.

These questions arise: Documentation—shouldn't this be written in layman's terms whenever possible, and only sufficient to obtain minimum necessary information? Brokerage—undoubtedly necessary at times for bonding, and for continuity in a shipment but do they guarantee identity & origin of a product? It appears in this instance the need for a broker may have been created by Customs—could one beget the other? Excesses—in general this nation can't afford; the World economy dictates that we think and live lean.

I recognize that this sort of thing must be kept in proper perspective and admittedly it was somewhat insignificant in dollar value and the problem will not re-occur too frequently. Yet there was a principle involved and someone had to remind Customs and your Sub-committee that a reviewal of this regulation seemed in order. America tends to try to buy its way out of problems of an irritating nature, rather than face them head on and getting them over with once and for all—this was my inclination at the time, but I refused to let it happen.

My recommendations are as follows: 1. Permit re-entry in as simple a manner as possible, as is suggested in H.R. 5452. 2. Paragraph (2) in the bill provides for "merchandise imported for the purpose of modification or repair prior to reexportation." It does not appear that the bill would provide for goods ordered in error. 3. I would suggest that the bill should include "shipments of United States origin, ordered in error and being returned for credit."

Let me remind you again that I represent Small Business in America—do keep us enthused as we go about exporting our products in the 1980's.

Mr. GIBBONS. As I understand it, where you exported a product and you reimport it to repair it, then what you are objecting to is a duty that is charged at that time? You have given here the return of an 8-year-old glider radio example. This is in Mr. Armington's statement. Explain to me what happened.

Mr. ARMINGTON. Well, the situation in this case was that a user of this very modest radio at the end of 8 years wanted to send it back. He wanted it modified to change the radio frequencies that it would operate on. And he sent it to us.

I believe, and it has been quite a few years now, because this dates back to 1977—I am not sure whether we were expecting it or not; I am a little rusty on that—but at any rate, it came to our attention that it was being held by U.S. Customs for formal customs entry because its value had been declared somewhat over a $250 limit.

The $250 limit would permit informal customs entry, but with a value over $250, it had to go formal, and they would not release it without a certain amount of formality that I can't really address readily here. It was such that we had to turn to a customs broker for assistance, or we had to put up a sizable bond.

When I talked about it with the broker, their advice, and I am quoting from a letter I wrote to this customer at the time:

Customs advises this entry must be processed by a Customs House broker. Our broker must charge you $82.50 and suggests we refuse the shipment, have it returned to you for reshipment with a lower declared value.

Now, these are very modest numbers, but some of our ursers are modest users. Other examples, like the one I have here involving the Canadian Government, are more substantial. But in the first example we refused the shipment. It went back to Canada. It was reshipped to us and declared at $250. And I might say that number is said to be 25 years old, which is pretty obsolete in this day and age. When reshipped from Canada the radio came directly to us.

We did the modifications and returned it to the customer. Our invoice to him was for $105. And he would have had to pay $82 brokerage in addition, which is rather sizable in this particular instance.

In the other case, of the Canadian Government, which I believe I cited there, they wanted $1,000 or so worth of service work done on a whole flock of radios. In their case the brokerage was $177. But the kind of a customer they were and the gross amounts involved were such that it went through fairly painlessly, but it isn't always that way.

Mr. GIBBONS. Thank you very much.

Mr. VANIK. I just want to point out that I met Mr. Stanton on the floor, and he explained to me his position on the bill. His statement will be in the record just preceding yours.

Thank you very much.

Mr. WOLFORD. May I ask a further question? Is it possible that you will permit the reentry of goods shipped in error under the informal procedures?

Mr. VANIK. We have a drawback bill, which is a separate piece of legislation, that might allow that. We have completed hearings on that bill but we haven't acted on it. The markup is scheduled for the 29th.

You should follow that carefully at that time, because we want to be sure that we recall the problem that was raised in your testimony.

Mr. WOLFORD. The formal testimony that I presented relates to that rather than to the bill, than to the modification.

Mr. VANIK. Yes. We have a similar issue in the drawback bill, H.R. 5464. You had better have your counsel review that to be sure that covers your situation. As a matter of fact, I would appreciate some communication from you as to whether or not that drawback bill will take care of your problem. You might review that right away before the 29th so that we have a letter of communication from you before that date.

Thank you. You are a close-by community. As a matter of fact, are you in my district?

Mr. ARMINGTON. No; I am in Congressman Stanton's district. But our paths have crossed at the Willoughby Fine Arts Association.

Mr. VANIK. Isn't there some Cleveland area enterprise involved in this same sort of problem?

Mr. ARMINGTON. No others that I am personally aware of.

Mr. VANIK. Thank you very much.

The next business is H.R. 5242, Mr. Shumway's bill. Our witness is Jack Hounslow, president, American Lignite Products Co. Your entire statement will be admitted into the record as submitted, and Mr. Gibbons will preside for a few minutes.

STATEMENT OF JOHN J. HOUNSLOW, PRESIDENT, AMERICAN LIGNITE PRODUCTS CO.

Mr. HOUNSLOW. My name is John J. Hounslow. I am president of the American Lignite Products Co., a California corporation.

American Lignite is a small company of approximately 22 employees, engaged in the business of mining lignite, a soft brown coal, for the chemical extraction of montan wax. Montan wax is used primarily in the manufacture of one-time carbon tissue for the business form industry.

American Lignite has been engaged in this business since 1947. Prior to this time montan wax was available only from what is now known as East Germany and Czechoslovakia. At the present time only the East Germans produce this product in competition with American Lignite.

The selling price of this Communist product was $0.57 per pound prior to the entry of our company into this business after World War II. Subsequent to our entry into the marketplace, the East Germans

dropped their price to as low as $0.12 per pound, or $0.10 below American Lignite's selling price at that time.

On two other occasions in the past 20 years, the East Germans made a determined effort to drive out their only competition in the free world. On all three occasions, American Lignite applied for legislation and/or administrative relief in order to protect its small but growing business.

On each occasion the East Germans responded by acknowledging that they were selling their product below fair market value, and promised not to threaten the U.S. producer again. This information is well documented in previous hearings by direct testimony of the East Germans through their domestic distributor.

Unfortunately, but not uncharacteristically, the East Germans have not been true to their word. In the past 3 years, the price of the American montan wax has been driven up from $0.43 per pound to $0.61 per pound, due to extraordinary increases in costs of energy and petroleum based solvents. Although these increases in costs have exceeded 100 percent, American Lignite has maintained its selling price increases to slightly below the general inflation rate in the United States through substantial capital investment. In fact, our new capital investment has exceeded our earnings by a factor of five.

On the other hand, the East Germans have increased their prices in the United States by our 3 percent annually for the past 5 years. The primary user market for montan wax is in the eastern half of the United States. Currently, the East Germans are delivering their product at prices one-third below that of their only competitor, American Lignite Products Co.

Curiously, the situation is quite different in other countries where the two competitors meet. In Canada, the East German product is sold for the equivalent of $0.612 per pound, at today's exchange rates. In Japan, the East Germans sell their product for the equivalent of $0.72. As you can see, these prices both exceed their U.S. prices by a substantial margin and are almost identical to the prices that American Lignite charges in Canada and Japan. I believe the reasons for their doing this are quite obvious.

Mr. GIBBONS [presiding]. May I interrupt there? Why don't you bring a dumping charge there?

Mr. HOUNSLOW. Well, we have done that before twice.

Mr. GIBBONS. It looks like the facts, if you are giving them correctly, show an open and shut prima facie case.

Mr. HOUNSLOW. That is the way it appears to me, too, but twice in the past it has tried and twice, for wahtever administrative reasons, we haven't seemed to get very far. And the two things that have happened are, each time we have done this, the Germans have showed up and said you don't have to do this thing because we will go back to the fair narket value. And they have done this. Prices stabilized for 7 years, but all of a sudden they do it again. And this is the third time.

I think the mistake made historically is that it was never followed through. Administratively they said, well, it looks like they are going to be OK.

Mr. GIBBONS. Well, we changed all that law last year. Hopefully, we felt it would work better. That is the reason I asked you the question. We hope we have a more aggressive agency administering that law.

Mr. HOUNSLOW. Will it be possible for a small company like myself acting on my behalf to work through that law? I have been advised it is rather difficult by the people in the administration to get something like that passed.

Mr. GIBBONS. Well, I don't know. I frankly cannot answer that question. I would like to find out a little more about it myself.

Mr. VANIK [presiding]. How about your adversaries who say you are more expensive by 80 cents a pound? Is that right?

Mr. HOUNSLOW. No. Presently, they are 47 cents and we are 61 cents, but they haven't raised their prices but a few cents in 5 years, and in fact, if you look at the rate of exchange, because they convert to East German deutsche marks, you will find their prices are actually around 25 cents a pound as opposed to what they were getting 20 years ago or even 5 years ago.

In other words, by not increasing their prices, they are down about 40 cents.

Mr. GIBBONS. They have just held in the Commerce Department that the Mexicans were not dumping tomatoes because they were selling tomatoes at the same price and at the same time in other markets around the world. What you are saying is that they are selling your competitive product at different prices at the same time around the world.

Mr. HOUNSLOW. That is correct.

Mr. GIBBONS. It looks like to me that if you can prove that, you have an open and shut case.

Mr. HOUNSLOW. Yes; I discussed this with Congressman Shumway. and he thought that we certainly ought to take direct action.

Mr. VANIK. Was the statement made that your product is not of the same quality?

Mr. HOUNSLOW. It is better quality, yes, but as I state later in my statement, we are a better product considering the standard in the industry. In over 30 years, the Germans have never been able to match that product. And it is worth probably a premium of 3 or 4 cents a pound, and in fact, if the bill were enacted into law, and if you added the 11 cents to the 47, it would still only be 57, and we would still be at a premium above that.

Our objective here is not to drive the Germans out of the marketplace. On the contrary, we believe that the industry needs them. What we are trying to do is to get back to the stable market share that we once enjoyed, which was between 60 and 65 percent. It has now dropped to 40 percent, and we are not in a position to maintain a viable business at that level.

Mr. VANIK. You may finish your statement. The argument on the other side is diametrically opposed.

Mr. HOUNSLOW. Oh, absolutely. I read the statement. Unfortunately, I was not aware of the hearing at the time. I am glad you allowed this.

Mr. VANIK. How many employees do you have?

Mr. HOUNSLOW. Twenty-two, including myself. We had 30 but we are down to 22 now.

Mr. VANIK. All right. Finish your statement, please.

Mr. HOUNSLOW. Thank you.

Well, I appear before this subcommittee today to urge you to support this tariff legislation in order to prevent this nonmarket country from driving its only free world competitor out of business. The consequences of their success in the endeavor are quite obvious, but worth emphasizing. Not only would all U.S. users of montan wax have to pay a substantial price for the East German product, as they did before American Lignite developed a competing wax, but in times of a national emergency associated with the Communist bloc countries, monton wax might not be available at all in the United States.

In conclusion, I would like to make the following comments regarding the impact of this tariff proposal or unrefined montan wax from East Germany.

One, the proposed tariff of $0.11 per pound would still allow the East Germans to sell their product—currently $0.47 per pound—at least $0.03 to $0.05 per pound below the American producer. American Lignite believes its product has superior quality and can remain competitive with the East Germans even with a modest premium in price.

Two, the impact of this tariff bill is almost insignificant on consumers of montan wax. It is probably in the range of 1 to 2 percent total cost increase. When you consider the montan wax user's total costs have increased more than 25 percent for all other materials used in their formulas, I believe you will agree that the impact on this tariff bill would be insignificant.

Three, it is not the objective of the American Lignite Co. to remove the East Germans from our domestic markets. On the contrary, we not only believe that all of our customers should have and use two sources of supply, we encourage them to do so. Our objective is, however, to recapture and retain our domestic market share for montan. Due to the predatory price practices of the East Germans during the past 3 years, the American product has fallen from a high of 67-percent market share to its present 40-percent share, not enough to maintain a viable business.

We believe that the passage of this bill will assist us in maintaining a share of approximately 60 percent.

Four, as further evidence that the East Germans are pricing their products at well below fair market value—and I would like to submit one exhibit. That exhibit indicates the selling price over the last 3 years of waxes used in the montan carbon paper industry.

Mr. HOUNSLOW. The Bareco Wax and Moore and Munger waxes are used as a direct replacement of either the German or American montan wax or may be used in conjunction with montan waxes. Both of these waxes are produced by U.S. companies. You will note that both of these waxes have had price escalations exceeding those of American Lignite. All three of these U.S. companies have been impacted by energy cost increases. Only the East Germans seem to be immune from these problems.

In conclusion, I ask that the members of the Subcommittee on Trade look favorably upon this tariff bill with the hope that it will offer some protection to domestic suppliers of waxes to the one-time carbon paper industry in the United States.

[An attachment to the statement follows:]

FLOW WAX SELLING PRICE[1] COMPARISONS IN THE UNITED STATES

[All prices f.o.b. plant or warehouse 20,000 lb lots]

Date	American Lignite	Bareco type WBII	Moore & Munger	East German
January 1977			0.39	[1] 0.39
June 1977	0.43	0.405		.39
January 1978	.46		.41	.41
June 1978	.475	.435		.41
January 1979	.495		.50	
June 1979	.52	.50		.43
January 1980	.595	.53	.58	.465
April 1980	.61	.63	.625	.465
Change (percent)	41.8	55.5	60.3	19.2
Approximate compound rate (percent)	12	15.3	17	[2] 3

[1] Since 1975.
[2] 5 yr.

Source: Chemical Marketing Reporter and official company price lists.

Mr. VANIK. Thank you very much.

Any questions?

[No response.]

Mr. VANIK. We will take this legislation up under a very careful review in our markup session. By that time, we may be able to make some determinations as to the selling price of this product in the other countries by your competitor.

Mr. HOUNSLOW. I submitted earlier the telegrams from foreign distributors of these waxes in Canada, yesterday.

Mr. VANIK. And what do those telegrams say?

Mr. HOUNSLOW. They state the selling prices of the German wax in Japan and in Canada.

Mr. VANIK. The Japan price is 71 cents?

Mr. HOUNSLOW. Correct.

Mr. VANIK. And Canada's is 61.2?

Mr. HOUNSLOW. Correct.

Mr. VANIK. Thank you.

Mr. SCHULZE. Mr. Chairman, I was on the floor when we discussed H.R. 5452. I ask unanimous consent that my statement be entered into the record during the proceedings and the discussion of this matter.

Mr. VANIK. Without objection, the statement will be admitted into the record at the appropriate point.

The next bill will be H.R. 5961. Mr. Stark, our distinguished colleagues from California, we would be very happy to hear you on this legislation.

STATEMENT OF HON. FORTNEY H. STARK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. STARK. Thank you, Mr. Chairman.

I have a prepared statement that I would like to ask be placed in the record.

Mr. VANIK. Without objection.

[The prepared statement follows:]

STATEMENT OF HON. FORTNEY H. STARK, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, Members of the Committee, I appear before you today to speak in opposition to the provision of H.R. 5961 which authorizes customs agents to make warrantless searches of citizens, and objects, including mail, departing from the United States when there is reasonable cause to believe that there are monetary instruments being transported for which the appropriate reports have not been filed.

Let me begin by stating the obvious: Stopping drug traffic into the United States is important—extraordinarily important. Nothing—nothing at all—is as important as protecting the rights of U.S. citizens under the Constitution. It is the responsibility of both Congress and the courts to defend the Constitution.

Now let me quote from a letter that the Justice Department sent to the Banking Committee on subject of H.R. 5961. "The Department believes that the proposed legislation involves a close constitutional question in authorizing a search, on less than probable cause, of persons and things departing the country."

That statement from the Justice Department alone, should be sufficient reason for this subcommittee to either delete or modify the part of the bill in question. The Congress of the United States should not be in the business of writing laws which present a close constitutional question as to whether they violate the 4th Amendment to the Constitution. Before we pass a law providing for warrantless searches of American citizens, we should be very sure that it is constitutional.

Let me go a step further; even if this bill is constitutional, it still requires modification. The section on warrantless searches of departing persons and things has been justified on grounds that it is necessary to fight the drug traffic. Yet the bill doesn't limit warrantless searches to cases where there is cause to believe that money is being transported for drug related purposes. Nor is it targeted to the kinds of cash transfers that are generally involved in the drug trade.

According to Mr. Marion W. Hambrick, Assistant Administrator for Enforcement, Drug Enforcement Administration, in testimony before the Oversight Subcommittee of the Banking Committee: "The volume of cash is such that we have seen instances where, for expediency's sake, traffickers weigh their cash rather than count it. Often the traffickers do not even pretend to be discreet, carrying their money in stuffed, overflowing brown grocery bags."

In other words, drug traffickers who take money out of the country take out big bucks—not ten thousand dollars, but ten times ten thousand dollars. Why then, authorize searches in cases where someone is thought to be carrying only $10,000?

Other testimony from the Administration on this same bill should also give us pause. At the same hearing, Assistant Secretary of the Treasury Davis, offering reasons for allowing the payment of informers said: "[T]o a very large degree we must rely on prior information to alert us to future departures."

If the Customs Service generally knows ahead of time about attempts to transfer money—why can't they go to a judge when they do have the time and get a warrant?

The Customs Service has assured us that they will not abuse the authority that this bill gives them. While I am certain that it would not be the policy of the Service to abuse this authority— abuse is possible. "Reasonable cause" to search is a lower standard than the "probable cause" standard of a search warrant. In fact, it appears that whatever an individual customs officer thinks is resonable justifies a warrantless search under the bill. That could lead officers to develop crude profiles of currency smugglers based in part at least, on racial characteristics. I would draw the attention of the subcommittee to the case of *U.S.* v. *Leverette*, 503 F. 2d 269, 270 (9th Ci. 1974) in which the Court found it reasonable for a customs officer to stop and strip search a woman, in part, because she was young, black, and from a large midwestern city.

When this bill was first brought to my attention, I asked the Congressional Research Service to do an analysis of it for me. I specifically indicated an interest in the constitutionality of the bill, the difference between the search standard under the bill and the Fourth Amendment's probable cause standard, and its relation to other recent congressional action concerning searches. A copy of this has been furnished to the staff and is attached to my testimony. I would particularly

like to point out that the CRS researcher notes in her conclusion that "[W]ere this legislation passed it would seem to conflict with the tenor of recent legislative efforts, including the Tax Reform Act of 1976, the Foreign Intelligence Surveillance Act of 1978, and the Right to Financial Privacy Act of 1978, which all require more procedural safeguards from Federal agents seeking data relating to individual United States citizens."

That we have to develop better ways to control the drug traffic into the United States goes without saying. On the other hand, there is no justification for adopting legislation that is as dangerous—if not more dangerous—to the liberties of our citizens than drugs are to the people who are hooked on them.

The provision of H.R. 5961 which authorizes warrantless searches of departing things and persons should be redrafted or deleted.

Mr. STARK. Just briefly for the benefit of the chairman and the distinguished members of the committee, I would like to express my opposition to the provision in H.R. 5961 which would authorize customs agents to search people without a search warrant, and the mail which is departing the United States.

Now, I think Mr. Frenzel, the distinguished gentleman from Minnesota, served with me on the Banking Committee when we went through this question of the Financial Privacy Act. That is where all of this stems from. There was a fear that currency departing the country for Swiss bank accounts was aiding and abetting organized crime, which it may indeed do, although I would submit registered bonds, which are insurable, are a more convenient method of taking large amounts of currency out. There are some bills that suggest that currency of large denominations be called in periodically and canceled, which would be an interesting way of stopping this.

It is my understanding as a layman——

Mr. VANIK. Well, would that be unconstitutional?

Mr. STARK. I don't know. I raised the constitutional issue in the search, and I think the issue I make here with regard to H.R. 5961 is that it is my understanding, to put it in lay terms, that if a person were exiting the country at an airport dressed as any of us are here today, in a business suit, and with a pocketful of heroin, they would not be able to be searched without a warrant. But if they are leaving with a pocketful of currency, according to this bill, you can search them without a warrant, and you can search the mail. And it doesn't make any sense to me and in the opinion of those advising me. And I suspect it will be ACLU's testimony that it makes no sense.

It seems we are making a special case for warrantless searches here when I don't think really that is called for by any evidence that we are having tremendous abuse of the law at this point.

I have long been involved with the financial privacy issue—and it has had broad bipartisan support. We fought this battle with regard to bank records. And I would ask that this not be passed. I would say this is just a kind of chink or hole in the dike, and we ought to plug it by not changing the rules as to warrantless searches where they suspect there is $10,000 of currency or more.

I would thank the chairman.

Mr. VANIK. Mr. Frenzel?

Mr. FRENZEL. I share your enthusiasm for restraining the gift of hunting licenses to agencies of the Federal Government, but it is my understanding that the law now allows a search for reasonable cause

rather than probable cause for contraband. So that you and I, if we were carrying heroin, could be subject to search without warrant.

Mr. STARK. Is that correct? I would defer to the gentleman's knowledge in that area. I would suspect that there are some crimes—for instance, if I was suspected of having stolen gems in my pocket, or a stolen work of art, which maybe is not contraband, that then I could not be searched without a warrant, and I have heard that now they are making cash into contraband in a sense, but at that point you have lost me.

So I guess I have to go back to my question on the issue of whether you can just search somebody on the theory that they might have more cash than is allowable, and somehow that crosses over, at least in my layman's concept of crossing over into what is too much of a hunting license.

Mr. FRENZEL. I am a little unclear myself. The sponsor, who is Mr. LaFalce, was here before us a couple of weeks ago and tried to draw a careful distinction between what we could do on drugs and contraband and what they were seeking to do on cash, and there is no doubt that this bill troubles many members of the committee.

On the other hand, there has been some testimony as to how it might be used, and it provides a difficult thing for all of us to evaluate.

Mr. STARK. I would urge the committee to consider it carefully. As I say, I tend to think that we would be starting a bad precedent. And we have worked very hard to build this privacy thing as you know. I would suggest that we have a Privacy Commission. I would suggest several of our colleagues in the House come up with a series of recommendations. We might even refer it to them if there was some question as to how this fits into the overall concept of our Federal interest in personal privacy.

Mr. VANIK. Thank you. Well, your argument is one that raises a lot of issues, Mr. Stark. Ron Paul, our colleague, circulated a letter raising some arguments. We have a response to that from Customs.

The business in narcotics is $50 billion that we are trying to get at. Customs contends that money is not contraband and they would not cause currency to be treated as contraband. They say "If a customs officer had a reasonable cause to suspect, he could search for unreported currency to the same degree he could search for dutiable or undeclared merchandise as well as other contraband."

I think that is where the similarity ends.

Contraband is prohibited on its face, and currency is not. The transportation of monetary instruments is an inherently innocent action. Congress has seen fit to declare that the exportation of monetary instruments worth more than $5,000 be reported. The bill would change this figure to $10,000, so that it would only be in the larger denomination. Currency is not illegal, but the refusal to report currency is.

The question then becomes, if a border search for currency passes the same fourth amendment test and other border searches must meet the "reasonable cause" standard, how then can H.R. 5961 be said to violate the Constitution?

Mr. STARK. You are asking me?

Mr. VANIK. Well, I am giving you the Customs Department response.

Mr. STARK. Well, OK. I guess I would respond by this statement. This is the Justice Department's statement, and I will just quote it. It is from the Currency and Foreign Transactions Act Amendments Report from the Banking Committee. I will leave a copy with the Chair. It is dated March 18, 1980.

The Department of Justice said, "The Department believes that the proposed legislation involves a close constitutional question in authorizing a search on less than probable cause of persons and things departing the country."

That suggests there is a great deal of disagreement. Not being an attorney, I would suggest that the constitutional issue be debated by lawyers such as the distinguished chairman of this committee, whose scholarship in that area is well regarded.

I am just urging this committee, as I would urge the full committee, to examine it very carefully. Now, when you get to the question of the merits of whether we need this to stop drug traffic, I serve additionally on the Select Committee on Narcotics, and I think they would have a tough case posing this as a real way to stop narcotics. It is sort of like closing the door after the horse has left the barn or is leaving the barn.

I think they might concentrate their efforts on looking for drugs coming into the country rather than the cash leaving the country. Furthermore, there is no assurance that this has to be a drug-related offense. It is anybody who they suspect may have more than the legal amounts of currency.

I think I can respond to the chairman by saying that I am sure he raises some questions on the constitutionality. I think it should be debated thoroughly. I hope the ACLU witness will be given close attention. I think from the standpoint of a layman that my question is seriously whether we want to authorize a particular law enforcement branch to search people leaving our country and the mail when we have real trouble allowing the FBI or the CIA or other people to search mail.

I think the questions ought to be debated perhaps more extensively and particularly this whole issue of constitutionality and the question of whether we want our privacy invaded to that extent.

Mr. VANIK. Title II of the bill does not say anything about drugs. I think it should in any event. Now, that would help. It would be helpful, wouldn't it?

Mr. STARK. I suppose, but I suspect if you deal with drugs, I would make an issue that this ought to be referred to the Judiciary and not to the Banking and Currency Committee. The whole beginning of this Privacy Act that our former colleague, Mr. Patman, from Texas, started, Mr. Chairman, was the idea that gamblers in Nevada actually or the Mafia or organized crime were attempting to take currency out of the country and get it into Swiss bank accounts. It never had its genesis particularly in the narcotics smuggling business.

So, this comes up as kind of an afterthought, and I think there is the danger.

Let's suppose that we did place a law, as Japan used to have, or as Great Britain did, on the question of how much currency you could take out of the country in an effort to stem inflation, for instance. I

don't think we would want to start a procedure whereby the citizens of this country or the guests were routinely given exit searches without some protection, more than a law enforcement officer—albeit in a specialized area—can do it at random.

I think the dangers there scare me more than whatever crimes I can conceive of that we are going to stop.

The testimony we have seen is that when people are taking narcotics profits out of the country——

Mr. VANIK. They don't have to take them out. They can buy tax-free bonds.

Mr. STARK. And that is legal. And they are taking trunks full. The problem in this country is how the street crime people get rid of huge amounts of bills of small denominations. The people buying narcotics in my district, first of all, don't have bills of large denomination. So one of the real problems we find are the drug dealers with huge shopping bags full of ones, fives, and tens, trying to find ways and schemes of laundering that into large bills. So, there are so many problems that we have to deal with in controlling narcotics that I think that this section is almost irrelevant to that.

Then the question comes, is it a problem with people taking currency out of the country to hide it? And there has been testimony, and in my formal testimony, I stated that in almost all cases of criminals being caught, it has been on the basis of an informer providing information that somebody is leaving. My feeling is, if they have time to get the information in advance notice from the informer, then they have time to go to court and get a search warrant.

Mr. VANIK. Well, you had a report you requested from the Library of Congress on this bill that seemed to lean in the direction of restricting the search authority.

Mr. STARK. Yes.

Mr. VANIK. Would you make that part of the record?

Mr. STARK. Yes. If the Chair would allow, I would ask unanimous consent to have an analysis of this bill, which was done for us by the Congressional Research Service, Mr. Chairman, placed in the record.

Mr. VANIK. Without objection, that will be entered into the record at this point.

[The information follows:]

AN ANALYSIS OF H.R. 5961 (96TH CONG., 1ST SESS.)

(By M. Maureen Murphy, Legislative Attorney, American Law Division, Congressional Research Service, March 17, 1980)

H.R. 5961, introduced and referred to the Banking, Finance and Urban Affairs Committee and to the Ways and Means Committee on November 27, 1979, would amend the Currency and Foreign Transactions Reporting Act (hereafter referred to as the Act), which is Title II of the Bank Secrecy Act, Pub. L. 91-508, 84 Stat. 1114, 31 U.S.C. §§ 1051-1143.

CURRENT LAW

The Currency and Foreign Transactions Reporting Act requires that certain reports be filed when currency or "monetary instruments" in an amount over $5,000 are transported out of or into the United States, 31 U.S.C. § 1101. The purpose of the reports seems to be tied to their "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings," 31 U.S.C. § 1051. Knowing failure to file the required reports may result in forfeiture of the monetary instruments, 31 U.S.C. § 1102; a civil penalty of up to $1,000; an injunction, 31 U.S.C. 1057; and a criminal penalty of not more than $1,000 in fines or

imprisonment for not more than one year or both, 31 U.S.C. § 1058. Where the violation of the Act furthers the violation of another federal law or is part of a "pattern of illegal activity involving transactions exceeding $100,000 in any twelve-month period," there is the possibility of a criminal penalty of $500,000, or five years or both, 31 U.S.C. § 1059.

The Act would punish "whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowingly—transports or causes to be transported monetary instruments." 31 U.S.C. § 1101. Enforcement under the Act is delegated to the Secretary of the Treasury, who is required to secure a search warrant requiring a show of probable cause supported by allegations of fact. 31 U.S.C. 1105.

EFFECT OF H.R. 5961

H.R. 5961 would affect current law in three ways: (1) it would attach criminal and civil penalties on any attempt to transport monetary instruments; (2) it would authorize "customs officers" to conduct warrantless searches on the basis of the officer's "reasonable cause to suspect there are monetary instruments in the process of being transported for which a report is required;" and, (3) it would authorize the Secretary of the Treasury to pay a reward to an informant for "original information which leads to a recovery of a criminal fine[,] civil penalty, or forfeiture, which exceeds, $50,000, for any violation of this Act or any regulation issued hereunder.

PURPOSE OF H.R. 5961

The bill itself sets out as its purposes: (1) furthering "more efficient enforcement by making it illegal to attempt to export or import large amounts of currency without filing the required reports," (2) allowing "United States Customs officials to search for currency in the course of their presently authorized search for contraband articles," and (3) allowing "for the payment of compensation to informers."

The first of these—making attempt unlawful—could be applied to the following situation. A traveler scheduled to board a non-stop flight from the United States to a foreign country notices that customs officials are checking departing passengers. Traveler changes his mind; he turns away from line; customs official sees traveler leave, stops him, notes boarding pass, searches him, finds currency in violation of Act. Traveler may be arrested for violation of Act since he has fulfilled the requirements for attempting to transport currency although he has not actually transported any currency, and, indeed, has decided against transporting any.

The second of these refers to "in the course" of customs officers' "presently authorized search for contraband articles." It, thus, raises the question of what is meant by "in the course of United States Customs officials['] . . . presently authorized search for contraband articles." Presently the Bureau of Customs has authority under 19 U.S.C. § 482 to search departing persons and material. Under that authority the Bureau routinely checks departures. Under the Currency and Foreign Transactions Reporting Act, the Secretary of the Treasury has authority to secure search warrants for transportation of monetary instruments in violation of the Act. 31 U.S.C. § 105. The Act covers all transfers of monetary instruments out of the country and into the country, including transshipment through the United States. The Secretary has delegated the authority under the Act with respect to physical transportation (as distinguished from transactions between financial institutions by wire, by memorandum, or by electronic communication, for instance) violations to the Commissioner of Customs. 31 C.F.R. 102.46.[1]

Aside from this delegation, it appears that the Commissioner of Customs has no statutory or standing authority[2] to conduct any search for contraband leaving the United States, although it is possible that Rule 41 of the Federal Rules of Criminal Procedure might be interpreted to permit the issuance of warrants

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[1] (Other delegations by the Secretary under the authority of the Act are: enforcement over bank transfers to the bank supervisory agencies; all other enforcement to the Internal Revenue Service, 31 C.F.R. 103.46.)

[2] Under Export Administration Regulations, 15 C.F.R. § 386, the licensing of exports is conducted through the Bureau of Customs. Searches for violations of export regulations and laws are conducted under the authority of 15 U.S.C. § 1581.

for such searches. The rule permits the issuance of a search warrant to "a civil officer of the United States authorized to enforce or assist in enforcing any law thereof . . . ." It has been used to authorize searches without regard to whether the officer has authority to enforce the particular law in question. The statute generally asserted for Customs Bureau to search and seize goods going out of the country is the general customs statute, 19 U.S.C. § 482, which reads:

"Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial."

Nowhere does it mention or imply authority over goods or persons leaving the country.

The bill speaks of "in the course" of United States Customs' officials "presently authorized search for contraband articles." While the bill and the Act contemplate searches of persons and objects leaving the country as well as those entering, there does not seem to be at present anything that could be described as a course of conduct involving a Customs search of objects or persons leaving the country. What may be described in those terms seems to be confined to exit searches. Customs searches for contraband going out of the United States seem to be confined to those occasions when search warrants have been obtained or the authority of another agency is used.[3] Other than those there is nothing that could be described as a course of conduct searching for contraband leaving the United States. Assuming that this is the case, there may well be an issue as to whether the wording of this proposal is sufficient to empower Congress to undertake warrantless searches of outgoing persons and goods.

If the language of the bill is seen to grant authority, the Department of the Treasury will have to choose between setting up enforcement procedures, involving increased manpower and resources, to screen outgoing persons, material, and mail, and selective enforcement. That the proposal seems to contemplate selective enforcement is indicated by its provision for rewarding informants.

According to Rep. LaFalce, 125 Cong. Rec. H 11593 (daily ed. Dec. 5, 1979), this legislation was offered specifically for the effect it was intended to have upon traffic in illegal drugs. According to testimony before the House Banking Subcommittee on General Oversight, by Assistant Secretary of the Treasury Richard J. Davis, there are large flows of currency in and out of the Federal Reserve offices in Florida; New York; El Paso, Texas; and Chicago, Illinois, that cannot be accounted for in the reports required to be filed with the Treasury Department under the Bank Secrecy Act and that are thought to be related to illegal drug traffic. 125 Cong. Rec. H 11593–11594 (daily ed. Dec. 5, 1979). Mr. Davis said:

"Another problem is providing coverage at the place of departure. Customs personnel are not generally stationed at smaller airports or even major departure ports, as they are at points of entry. There is no routine screening of individuals

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[3] There is a system of licensing used for shipping goods out of the country, allowing Customs to clear bulk shipments in advance.

Customs officers have been involved in stopping and boarding vessels under 19 U.S.C. § 1581. Some vessels that have left domestic ports may have been involved in searches. The more common practice may well be accompanying a Coast Guard officer in an administrative search: the Coast Guard, using its authority under 14 U.S.C. § 89(a) to conduct administrative searches of domestic vessels, accompanied by a Customs Patrol Officer, will board a vessel and conduct, not a search for safety violations, but a search for contraband drugs. The customs officer comes because of his knowledge of where contraband is likely to be hidden and how. Statement of Albert Bazemore, Regional Commissioner of Customs, Drug Smuggling (San Juan, P.R.): Hearings Before the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries, 94th Cong., 1st Sess. 13 (1975).

as they leave the United States. Therefore, to a very large degree we must rely on prior information to alert us to future departures . . . However with our present resources, we must be selective and thus may not always be able to respond to every anonymous tip. We must develop sources of information concerning the financial operations of organized narcotics traffickers. To encourage people who have this sensitive information to contact the law enforcement community, it is, unfortunately necessary to offer something valuable in return." 125 Cong. Rec. H 11595 (daily ed. Dec. 5, 1979).

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LEGAL EFFECT OF THE BILL

The most significant legal[4] effect of the bill, if enacted, would be the removal of the statutory requirement that Customs officials secure a judicially authorized search warrant for searches of persons and items leaving the United States believed to be transporting monetary instruments in violation of the Currency and Foreign Transactions Act.

No such warrant is presently needed for searches of incoming persons or items. The general customs statute, 19 U.S.C. § 482, authorizes warrantless searches of "any vehicle, beast, or person," upon "reasonable cause to suspect there is merchandise which was imported contrary to law." The Currency and Foreign Transactions Act does not deprive the Bureau of Customs of this authority: in section 235(B), 38 U.S.C. § 1105(b)1 it says:

"This section is not in derogation of the authority of the Secretary under any other law."

It is also highly likely that if the warrant requirement of the Currency and Foreign Transactions Act, 31 U.S.C. § 1104(a) did not exist the courts would permit searches of persons and things leaving the country upon a showing of reasonable suspicion. Several courts, including three circuit courts, have looked at Customs Bureau searches of outgoing material or persons and have concluded that they fell within what is known as the border exception to the Fourth Amendment's warrant requirement. The cases are: *United States* v. *Stanley*, 545 2d 661 (9th Cir. 1976); *United States* v. *Swarovski* 592 F. 2d 131 (2d Cir. 1979). *United States* v. *Ajlouny* 476 F. Supp. 995; (E.D. N.Y. 1979), *Samora* v. *United States*, 406 F. 2d 1095 (5th Cir. 1969), and *United States* v. *Chabot*, 193 F. 2d 285 (2d Cir. 1951).

The earliest case that could be identified is the 1951 *Chabot*. In that case the Second Circuit upheld a conviction for attempt to ship gold out of the United States in violation of the Trading with the Enemy Act. There was a Fourth Amendment claim which the court rejected on the basis of 19 U.S.C. § 1581. According to the court "the right of customs officers to inspect cargo being shipped abroad at a point of embarkation is apparent," *United States* v. *Chabot*, 193 F. 2d 285, 290.

The most recent case is *Ajlouny*. In it the United States District Court for the Eastern District of New York, upheld a search by U.S. Customs Service agents of cargo in a customs control area and scheduled for shipment out of the United States. No warrant was sought and there was no showing of probable cause. The standard seemed to be the "justifiable suspicion" of the agent who "reasonably suspect[ed]" "attempt to violate munitions export laws." *United States* v. *Ajlouny*, 476 F. Supp. 995 (E.D. N.Y. 1979). The facts upon which the reasonable suspicion rested included knowledge that the suspect was affiliated with the Palestine Liberation Organization, and information about his having committed a weapons violation and having engaged in a blue box fraud against New York Telephone Company involving telephone calls to Russia. The agents had placed the suspect under surveillance and thereby learned of his shipment but not its contents.

The court upheld the search on the same rationale that has been used by the courts to uphold warrantless border searches of incoming goods and persons

[4] This bill also supersede 39 U.S.C. § 3623(d) which provides, in part: "No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of a Postal Service for the sole purpose of determining an address. . . ."

on a showing of less than probable cause: the right of a nation to protect the integrity of its borders.[5] It reasoned:

"It would be anomalous to allow the sovereign to protect its borders only against incoming dangers, while foreclosing the use of similar precautions for sensitive and dangerous materials being illegally exported. *United States* v. *Ajlouny*, 476 F. Supp. 995 (E.D.N.Y. 1979)."

The cases in between reflect varying levels of analysis with *Stanley* making the greatest attempt to provide a framework for both distinguishing and reconciling the differences between the border search upon arrival and the customs search upon exit.

In *Stanley*, the Fifth Circuit upheld a search of a vessel that was one of eight leaving the United States from an area near a truck around which traces of marihuana were found. The court explicitly found that there was no probable cause for the search and that no border search was involved. It upheld the search on the grounds of its being a "customs search:" a valid border—the three-mile limit of territorial waters—had been crossed. It further found the search to be reasonable, noted that the class of persons to which it applied was "morally neutral," and identified the following elements common to "both incoming and outgoing border-crossing searches:"

"(1) The government is interested in protecting some interest of United States citizens, such as restriction of illicit international drug trade, (2) there is a likelihood of smuggling attempts, at the border, (3) there is difficulty in detecting drug smuggling, (4) the individual is on notice that his privacy may be invaded when he crosses the border, and (5) he will be searched only because of his membership in a morally neutral class. *United States* v. *Stanley*, 545 F. 2d. 661, 667."

In *Swarovski*, the United States Court of Appeals for the Second Circuit upheld against a Fourth Amendment challenge the warrantless search by Customs of the luggage of a airplane passenger leaving the United States without indicating what standard it applied to the search. The facts underlying the officer's determination to search. They might well satisfy a reasonable cause standard. They included knowledge of possession of a military aircraft gunsight camera without a State Department export license and refusal to furnish the required information as to ultimate consignee. In the case, the Second Circuit did not engage in any serious analysis of whether exports were covered within the border exception. Instead it relied on reference to prior cases.

The net effect of the bill would be to add one more tool to the Secretary of Treasury's enforcement apparatus for enforcing the Currency and Foreign Transactions Reporting Act. Under the current 31 U.S.C. § 1105(a), the Secretary has authority to secure a search warrant for suspected violations. This bill would not change that authority. Instead it would provide the Secretary with another enforcement mechanism, a warrantless search by "customs officers." There is no definition of "customs officers" in the bill or in the Act. The term is used in other federal law, however, and in all likelihood will be interpreted to mean an officer of the customs service, that is the United States Bureau of Customs.

PRACTICAL EFFECT OF THE BILL

Although the legal affect of enacting H.R. 5969 might be limited, there is a strong possibility that warrantless searches of outgoing travelers and cargo upon reasonable suspicion that monetary transfers in excess of $5,000 were occurring or being attempted might well have a considerable impact upon drug traffic. Since the value of the imported illegal drugs increases with every handling, from grower to importer to cutter to dealer to ultimate purchaser and user, stopping even a portion of the exportation of currency might have recognizable effect upon drug traffic. On the other hand, there is the equally valid conjecture that persons able to import drugs in violation of the law in the face of routine customs checks and border patrols will be equally able to export money if similar check points are established for departures from the United States.

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[5] Under such a line of reasoning the Supreme Court upheld a warrantless search of incoming mail reasonably suspected of containing contraband, *United States* v. *Ramsey*, 431 U.S. 606 (1977).

Prior to that, the Court had not actually ruled on what it had traditionally accepted as an exception to the Fourth Amendment's warrant clause. It first acknowledged such an exception in 1886 when it noted that the predecessor of today's general customs statute was enacted by the same Congress that proposed the Bill of Rights and inferred that "it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment." *Boyd* v. *United States*, 116 U.S. 616, 623 (1886).

CONSTITUTIONALITY OF THE PROPOSED LEGISLATION

The Supreme Court has not ruled on the issue of whether the border exception applies with equal force to searches upon departure from the United States. Every lower court so doing, however, has ruled in favor of the searches. None of these decisions, however, engages in very extensive analysis and none considered facts involving the screening of correspondence. It is, thus, quite possible that the broad sweep of H.R. 5961 combined with its potential for First Amendment impact may move the courts to find searches undertaken under its authority incompatible with the United States Constitution.

As has been mentioned above [6] the courts passing on customs inspection of outgoing persons or things have concluded that there is no Fourth Amendment violation and have applied the same rationale for these searches as has been applied for searches incident to a border crossing for purposes of entering the United States.

The United States Supreme Court, however, has not addressed the issue. In not one of its opinions that we could find, moreover, was there even a word of dicta to the effect that the same rationale would apply for all border crossings. In *Carroll* v. *United States*, 267 U.S. 121, 154 (1925), for instance, in dicta, the Court said:

"Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one *entering* the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in." [Italic added.]

This passage has been cited with regularity as authority for recognizing the border search as an exception to the warrant requirement of the Fourth Amendment.

In 1973 in *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 272(1973), the Supreme Court itself referred to the passage with approval. Although the Court in the 1973 case did not uphold a search based upon this exception it acknowledged that searches at the international border could be conducted without a warrant but limited such seaches to those falling within a reasonableness standard:

"Whatever the permissible scope of intrusiveness of a routine border search might be, searches of this kind may in certain circumstances take place not only at the border itself, but at its functional equivalents as well."

In 1977, in *United States* v. *Ramsey*, 431 U.S. 606 (1977), the Supreme Court for the first time fully recognized the validity of a warrantless border search based upon reasonable cause by upholding such a search of mail coming into the country and reasonably believed to contain contraband. The search was conducted under the general customs statute, 19 U.S.C. § 482. The Court, in an opinion written by Justice Rehnquist, joined by the Chief Justice, and Justices Stewart, White, Powell, and Blackmun, characterized the border-search exception as follows:

"The border-search exception is grounded in the recognized right of the sovereign to control, subject to substantive limitations imposed by the Constitution, who and what may enter the country. *United States* v. *Ramsey*, 431 U.S. 606, 620."

One of the central issues was whether the statute authorizing the search applied to letter mail. It was argued that letter mail was somehow so different from other envelopes as to require more stringent protection. The Court found that the person challenging the search conceded that customs officers could search envelopes being carried on the person of anyone crossing an international border. This it found to dispose of the issue: "[s]urely no different constitutional standard should apply simply because the letters were mailed, not carried." *United States* v. *Ramsey*, 431 U.S. 606, 620. As to First Amendment concerns, the Court found that, in the absence of a showing that the correspondence had been read, First Amendment interests were satisfied by the Postal regulation prohibiting the reading of correspondence without a search warrant. A customs regulation, 19 C.F.R. § 145.3 (1976), applies this to the customs situation prohibiting customs officers from opening letter class mail "which appears to contain only correspondence."

Left with no Supreme Court opinion on point one may point out similarities and distinctions between border-exits and entrances. The interest in the sovereign is the same insofar as protecting its integrity against external threats. Items

[6] See *supra*, 6–9.

coming into the country may affect the health and safety of the persons inside or may violate arrangements between the sovereign and other nations. Items going out may have similar effects: vital natural resources may be needed for the home front; technological products vital to military equipment may need to be kept out of the hands of the nation's enemies.

The interest of the sovereign differs, however, when the question is phrased in terms of inhibiting the rights of persons seeking to cross the borders. Persons seeking admission to the United States include both citizens and non-citizens; the former are protected fully by the Constitution; the latter, perhaps to a lesser extent.

Also to be considered is the focus of this bill; it is not addressed to searches for commodities or for large or heavy amounts of cash,[7] nor is it limited to failure to report currency being transported for illegal munitions or drug trade purposes. Instead it would extend to anyone or any envelope leaving or coming into the country thought to be carrying an amount of cash as low as $5,000. It is, thus, heavily laden with the potential for abuse because of its great reach, notwithstanding the Customs regulation prohibiting the reading of mail.[8]

Another potential for abuse derives from the subjective nature of the standard provided. The standard for the search authorized by the bill is a lower standard than the probable cause standard of a search warrant. A reasonable cause standard is often used in the context of administrative agency subpoena. It seems to connote a more subjective approach than that of the judicial warrant. On the theory that the administrative officer issuing the subpoena is familiar with the details of the investigation, the standard he applies is very much a standard of what is reasonable to him. The judicial search warrant, on the other hand, demands an impartial magistrate and, thus, implies an objective standard. In addition to determining whether the person seeking the search has "reasonable grounds at the time of his affidavit . . . for the belief that the law was being violated," *Dumbra* v. *United States*, 268 U.S. 435, 439 (1925), the magistrate must also determine probable cause according to "the factual and practical considerations of everyday life on which reasonable and prudent men act." *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949).

Eliminating this more rigid standard may bring abuses particularly when the objects ostensibly sought may be so small as a piece of paper. The methods used to screen potential searches by customs officers are very sophisticated. A Note, "Drugs, Databanks and Dignity: Computerized Selection of Travelers for Intrusive Border Searches," 56 Boston University Law Review 940 (1976), describes the Treasury Enforcement Communication System (TEC), as, in 1975, containing 450,000 dossiers with 562,000 names. It interfaced with the Federal Bureau of Investigation's National Crime Information Center and the National Law Telecommunications System. The Note also indicated that this system is technologically compatible with other data banks and could be joined to them in the future. According to the Note, the Customs Service uses TEC information and a Customer Accelerated Passenger System (CAPIS) to speed the majority of passengers through inspection. It also uses a "profile" of smugglers to identify persons for more intrusive searches—strip searches, body cavity searches, or searches of body fluid. Some of the profiles as revealed in court cases are very crude and based on race—e.g. young black couples from large midwestern cities, *United States* v. *Leverette*, 503 F. 2d 269, 270 (9th Cir. 1974).

Given the lower standard, the possible limited effect upon drug smuggling, and the broad reach of the legislation, courts may choose to focus on the First Amendment impact and find that to be determinative. The argument might be: United States citizens have a First Amendment right to free expression. To some extent that applies when the communication is directed to persons outside the United States,[9] just as the Fourth Amendment protects Americans abroad—albeit to a limited extent. When the United States interferes with First Amendment rights a four part test applies. This was enunciated in *United States* v.

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[7] Statement of Richard Davis, Assistant Secretary of the Treasury, before the House Banking Subcommittee on General Oversight, 125 Cong. Rec. H 11596 (Dec. 5, 1979) indicates that large cash transfers are really the concern of the Treasury Department: "The volume of cash is such that we have seen instances where, for expediency's sake traffickers weigh their cash rather than count it. Often, the traffickers do not even pretend to be discreet, carrying their money in stuffed, over-flowing brown grocery bags."

[8] The presence of an agency's violating its own regulation would not prevent a court from ruling that a search was constitutional. *United States* v. *Caceres*, 440 U.S. 741 (1979).

[9] *Procunier* v. *Martinez*, 416 U.S. 397(1974) established that censorship of a communication impinges on the rights of both the sender and the person to whom it is addressed.

O'Brien, 391 U.S. 367, 377 (1968), as follows: "a government regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

CONCLUSION

H.R. 5961 will have the limited legal effect of permitting customs officers to conduct warrantless searches of persons and things leaving the United States upon reasonable cause to suspect them to be transporting undeclared amounts of currency in violation of the law.

Such searches have never been upheld by the Supreme Court but may likely be upheld on the same rationale that has authorized warrantless searches of incoming persons and things—national self-protection.

There are, however, differences, particularly in the impact upon United States citizens and upon their First Amendment rights, which might convince the Court to rule against these searches.

However the Court may act, were this legislation passed it would seem to conflict the tenor of recent legislative efforts, including the Tax Reform Act of 1976, the Foreign Intelligence Surveillance Act of 1978, and the Right to Financial Privacy Act of 1978, which all require more procedural safeguards from federal agents seeking data relating to individual United States citizens.

Mr. VANIK. Now, there is just one other thing that concerns me. When you compare what is done by other countries, they go a lot further than anything we do. They require you to report your currency on entry.

Mr. STARK. If the Chair would allow, I submit there may be a difference from entry than——

Mr. VANIK. Than existing?

Mr. STARK. Yes, and there is no question that there is a very serious case, for instance, of the security searches, the metal detectors looking for explosive devices or weapons——

Mr. VANIK. Would you feel differently if the legislation was limited to entry?

Mr. STARK. I suppose that it would certainly improve it. I don't know that there is a law against bringing currency into the country. I rather suspect that it would be in the national interest that we have people bringing in money. I don't know.

Mr. VANIK. Well, it doesn't do us any good here if they can just draw it out any time when the interest rate goes high.

Mr. FRENZEL. The reason they might be taking it out is not because they are going to take it out and leave it out. What they want to do is prevent them from taking it out to buy more heroin that eventually is brought back in. That is the problem.

Mr. STARK. If that is the case, and if the gentleman from Minnesota would yield on that point, then I would submit that the bill properly should come out of the Judiciary Committee, because the original Patman Bank Secrecy Act, as it was called—and the legislative history, I am sure, will show this—was to prevent taking illegal and ill-gotten gains out of the country and sequestering them in Swiss bank accounts. As the gentleman from Minnesota, I am sure, recalls, the distinguished former colleague from Texas had a phobia about the conspiracies to which people would go to do that, and it was a passion of his, but I don't think anywhere did the idea come up that these were deposits or down payments or cash being used to purchase narcotics to bring into the country.

As I say, I think it is ill-conceived. And I think that we create more problems than we may solve. And I am very uncomfortable. I wish I could argue the constitutional merits, but it is just beyond my knowledge as to the sophisticated nuances of the Criminal Code and the rights and procedures in terms of evidence and search. I just cannot argue that.

I can just tell you as a person who has been concerned with a good balance between law enforcement and our right to privacy, I think this seems to be tipping the scales too far toward casual searches that are unwarranted, if you will, both figuratively and literally.

Mr. VANIK. Well, thank you very much, Mr. Stark.

Is there anyone else who wants to testify? We would be very happy to hear next from Mr. Wolff, our distinguished colleague, who is an expert in the Congress on the problem of illicit drugs in this country.

I might say for those who are present that it is the intention of the Chair to adjourn this meeting as soon as we finish this bill, until 2 o'clock, at which time we will take the remaining testimony.

Mr. Wolff, we are very happy to hear your testimony.

STATEMENT OF HON. LESTER L. WOLFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WOLFF. I thank the chairman and members of the committee.

Mr. Chairman, as the chairman of the Select Committee on Narcotics Abuse and Control, and as a cosponsor with Representative LaFalce of H.R. 5961, I appreciate the opportunity to appear before you today to offer my support and the support of members of the Select Committee for this important legislation. Enactment of this measure would close several loopholes in the existing Bank Secrecy Act—loopholes that seriously hinder the efforts of our law enforcement officials to curtail the multibillion-dollar illicit drug trafficking industry.

Under its mandate to conduct a continuing comprehensive study and review of the problems of drug abuse and control, the select committee has investigated the financial transactions drug smugglers engage in to support and conceal their operations. In both Chicago and south Florida, the select committee found that drug dealers often use domestic financial institutions, including currency exchanges and banks, to launder the immense proceeds of their trade. These profits may be transferred to foreign bank accounts or used to infiltrate legitimate businesses. Particularly in south Florida, our committee found that the tremendous narcotics trade had made money laundering a big business, adversely affecting the climate for legitimate businesses.

I might say that the Federal Reserve System has, upon examination of banks, found extremely large amounts of cash acquired in that particular area. It is estimated that some $6 billion a year leaves the Florida area for Latin America alone.

Early in 1979, the select committee led a fact-finding trip to Colombia, one of the major sources of illicit drugs entering the United States today. It is now reported that the trade in marihuana and cocaine from Colombia exceeds that of coffee, Colombia's main export crop. The committee was accompanied on the investigation by Mr. LaFalce and other Members of Congress, as well as representatives from the

White House and other executive branch departments and agencies. As a result of this mission, Mr. LaFalce introduced three bills which have since been combined in H.R. 5961.

The Bank Secrecy Act, adopted in 1970, recognized that attacking the illegitimate profits of criminal enterprises is an effective weapon in curtailing the underlying illegal activity. That act was intended to provide Federal enforcement officials with the tools and information necessary to monitor and investigate unusual currency flows related to drug trafficking and other criminal acts. Serious gaps in the law, however, prevent its effectiveness from being fully realized.

H.R. 5961 would remedy several of these deficiencies. First, it would make illegal any attempt to leave the United States with more than $10,000 without filing a report as required under the act. Although the law currently requires any person leaving the country with more than $5,000 to file a report, courts have held that no crime occurs until a person has actually left the country without filing a report.

I noticed in the colloquy that took place before that there was a question as to whether or not the right to search would be restricted to those people entering the country. Well, it is an illegal act to transport more than $5,000 without reporting it today. And that was enacted by the Congress of the United States. But the situation is that the courts have said that until a person has actually left the country without filing a report, Mr. Chairman, he is not guilty of a crime. This creates a catch-22 situation in which suspects may not be prevented from departing, but cannot be arrested afterward because they are outside the jurisdiction of the U.S. enforcement officials. We are finding it very difficult to have many of these people extradited back to the United States.

Second, H.R. 5961 would permit customs officers to search for unreported currency and monetary instruments at the border without first obtaining a search warrant when they have reasonable cause to suspect that an amount in excess of $10,000 is being transported into or out of the country. This authority is comparable to the current customs authority to search for other contraband.

The select committee, in several reports based on its investigations, has previously recommended the adoption of both of these amendments.

Third, H.R. 5961 would authorize cash rewards of up to $250,000 for original information leading to a recovery in excess of $50,000 for any violation of the Bank Secrecy Act. This amendment would provide a needed incentive for persons aware of currency smuggling to report this information to the Government.

Finally, the bill requires the Secretary of the Treasury to report to Congress, within 18 months, on the effectiveness of the other amendments.

In closing, I strongly urge your subcommittee to act favorably on H.R. 5961 and to expedite its passage through the full Ways and Means Committee to the House floor.

Contrary to what has been said here as to whether or not this bill is supported, I might say the bill has been cosponsored by over 50 Members of the House, including 9 from the Select Committee on Narcotics Abuse and Control. It has been endorsed by Customs, Treasury, and the DEA. Companion legislation has already been introduced

into the Senate. Enactment of this measure would greatly increase the tools available to our enforcement agencies to stem the flood of illicit drugs into our country.

I thank the gentlemen.

[The prepared statement follows:]

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Under its mandate to conduct a continuing comprehensive study and review of the problems of drug abuse and control, the Select Committee has investigated the financial transactions drug smugglers engage in to support and conceal their operations. In both Chicago and South Florida, the Select Committee found that drug dealers often use domestic financial institutions, including currency exchanges and banks, to launder the immense proceeds of their trade. These profits may be transferred to foreign bank accounts or used to infiltrate legitimate businesses. Particularly in South Florida, our Committee found that the tremendous narcotics trade had made money laundering a big business, adversely affecting the climate for legitimate businesses.

Early in 1979, the Select Committee lead a fact-finding trip to Columbia, one of the major sources of illicit drugs entering the United States today. It is now reported that the trade in marihuana and cocaine from Colombia exceeds that of coffee, Colombia's main export crop. The Committee was accompanied on the investigation by Mr. LaFalce and other Members of Congress, as well as representatives from the White House and other executive branch departments and agencies. As a result of this mission, Mr. LaFalce introduced three bills which have since been combined in H.R. 5961.

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H.R. 5961 would remedy several of these deficiencies. First, it would make illegal any attempt to leave the United States with more than $10,000 without filing a report as required under the Act. Although the law currently requires any person leaving the country with more than $5,000 to file a report, courts have held that no crime occurs until a person has actually left the country without filing a report. This creates a Catch-22 situation in which suspects may not be prevented from departing but cannot be arrested afterwards because they are outside the jurisdiction of U.S. enforcement officials. The amendment in H.R. 5961 would eliminate this anomalous situation.

Second, H.R. 5961 would permit Customs officers to search for unreported currency and monetary instruments at the border without first obtaining a search warrant when they have reasonable cause to suspect that an amount in excess of $10,000 is being transported into or out of the country. This authority is comparable to the current Customs Authority to search for other contraband. The Select Committee, in several reports based on its investigations, has previously recommended the adoption of both of these amendments.

Third, H.R. 5961 would authorize cash rewards of up to $250,000 for original information leading to a recovery in excess of $50,000 for any violation of the Bank Secrecy Act. This amendment would provide a needed incentive for persons aware of currency smuggling to report this information to the government.

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In closing, I strongly urge your Subcommittee to act favorably on H.R. 5961 and to expedite its passage through the full Ways and Means Committee to the

House Floor, H.R. 5961 enjoys widespread support. It was co-sponsored by over 50 Members of the House, including 9 from the Select Committee, and has been endorsed by Customs, Treasury, and the Drug Enforcement Administration. Companion legislation has also been introduced in the Senate. Enactment of this measure would greatly increase the tools available to our enforcement agencies to stem the flood of illicit drugs into our country.

Thank you.

Mr. VANIK. Thank you, Mr. Wolff. I have no questions.

We are going to have to deal with this issue in markup, and we have some problems, but I hope we can resolve them in markup.

Mr. Frenzel?

Mr. FRENZEL. I have no questions. I thank the gentleman for coming.

Mr. VANIK. We know the problem you have brought to us, and we are very aware of it. We hope we can resolve the differences. There is considerable opposition to it. I recognize the need for doing something about it.

Mr. WOLFF. Mr. Chairman, if only to keep your balance of trade figures correct, because——

Mr. VANIK. You feel we might pick up some trade?

Mr. WOLFF. We might pick up some elements that are not reflected in the balance of trade figures that are today leaving the country. Our deficit in many cases is much greater than is reported.

Mr. VANIK. I believe that. I have to live with that deficit. We haven't been able to crawl out of it since I have been chairman of this subcommittee.

Thank you very much.

Mr. WOLFF. I thank the chairman.

Mr. VANIK. The next witness is Mr. Paul.

Your entire statement will be included in the record as submitted, and you may proceed in excerpting it.

Dr. Paul, I hope you will understand, I have to go to my office. Mr. Frenzel will take your testimony and advise the subcommittee as to your statements.

You are in support of the bill?

STATEMENT OF HON. RON PAUL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. PAUL I oppose it. I consider it very unconstitutional.

Mr. VANIK. You are joined with Mr. Stark. How many are there that oppose it?

Mr. PAUL. Well, 100 percent of the letters sent to Congress, as far as I know, oppose it. We have 50 Congressmen supporting it, but there is no support among the people. I hope the rest of the Congressmen who have not cosponsored it are opposed to it, too.

Mr. VANIK. You don't see a way that we can make it constitutionally acceptable?

Mr. PAUL. Not without some major changes, and that would be rather risky.

Mr. VANIK. I hope you might suggest some ways.

Mr. PAUL. May I suggest one thing I did propose, even though I wouldn't have been satisfied with it, but I think it would be of tremendous help—I think you indicated that you may accept this—and that was to direct its attention to drugs. I introduced an amendment

in the Banking Committee to limit it to the suspicion of drug trafficking and use it for that reason.

Mr. VANIK. I certainly think that ought to be done anyway.

Mr. Frenzel will take over.

Mr. PAUL. Thank you. I would like to introduce into the record my written statement, and then make a few comments about the bill, because I am one of the individuals who has strongly opposed this bill. I have done everything I can to alert my colleagues to the danger of the bill.

When it was first introduced in November, our hearing in the Oversight Subcommittee occurred 2 days later. There really wasn't that much opportunity to study the bill. It went before a second subcommittee of the Banking Committee, Financial Institutions, in January. At that time I did testify against it and was the only person to do so.

Then it went subsequently to the full Banking Committee and was passed out overwhelmingly, unfortunately. Since that time, since the people have been alerted to the danger of this bill, there have been thousands of letters sent to the Congress indicating their dislike for it. And for this reason, I believe we are holding these hearings today, and I am delighted that these hearings have been held.

I think when the evidence is put out on the table, it is going to be very difficult for us to flaunt the Constitution and pass a bill such as this.

I am not sure who wrote the bill. I do believe the cosponsors, though, who have their name on it, are very sincere in what they would like it to do, and that is to curtail drug trafficking. However, it is very clear that it doesn't mention drugs.

I was interested in the statement of one of my colleagues on the Banking Committee who came to me the day before we were about to vote on it in the Banking Committee, and he confided in me and said that he would be on my side and oppose it, which rather surprised me, because I knew he was a cosponsor. He said that after he had gotten my letter indicating some shortcomings in the bill, he decided to read the bill, and he decided it was unconstitutional.

[The letter referred to follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 3, 1980.

DEAR COLLEAGUE: H.R. 5961 has been scheduled for floor action later this week. It was reported from the Banking Committee last Wednesday by voice vote. It is not a drug trafficking bill, but a money control bill. It would expand the powers of the government under th Invasion of Privacy (so-called Bank Secrecy) Act of 1970.

1. The bill would give authority to conduct warrantless searches upon leaving the country. No statutory authority presently exists for conducting warrantless searches of persons and things leaving the country. This is a very dangerous innovation smacking of a totalitarian society.

2. The bill violates the Constitution. For the first time, currency, coins, stocks, bonds, and other "monetary instruments" are to be treated as contraband. Transportation of such instruments is an inherently innocent action, yet customs officers would be authorized by the bill to conduct warrantless searches for such instruments.

3. The hearings on this bill have been one-sided and perfunctory. Only Administration witnesses have been heard on the bill, and they all favor it. (It would be remarkable if the government opposed a bill that would greatly enhance its power.) Why do we insist that both sides be heard in judicial proceedings

when only one person is affected, and feel free to act on legislation that will affect millions after hearing only one side?

4. The bill confers broad power that invites abuse. The Secretary may define "monetary instruments" as he pleases under this bill and under present law. He may also define an "attempt" to leave the country. Such extensive power of definition encourages abuse by the executive.

5. The public, once informed about the bill, opposes it. But the bill is being rushed through before the public is fully informed. This is not a responsible way to legislate.

Sincerely,

RON PAUL.
GEORGE HANSEN.
LARRY MCDONALD.
JIM JEFFRIES.

Mr. PAUL. That is what I am trying to do. I am trying to get people to read this bill and realize what it is. If they do that, I then think I will have a majority of the Congress in opposition to the bill.

I think the main attack and the main reason why this bill should not be passed is the constitutional issue. I think the fact that under the bill they could conduct warrantless searches is an attack on our personal freedoms and should not be permitted. The Constitution is very, very clear on that. And just because the Customs agency or the Treasury says it is constitutional, that means nothing. They happen to be the ones who are looking for more power and clout and more authority. I think that is not where you make the interpretation of the Constitution.

We as Congressmen must interpret the Constitution when we write law. For us to go and talk to the Customs agency or give them more authority to confiscate monetary instruments is hardly very logical if they have not been able to curtail the movements of tons of drugs. I cannot believe a monetary instrument or a check or a money order would be more easily detectable than the large volume of drugs. And they have more or less totally failed in that pursuit.

So I would think curtailing the freedom of all Americans in order for them to expose or extend their authority is not very logical. It is very impractical as far as I am concerned.

A dangerous part of this bill, title I says, if you even attempt to transport or receive $5,000 in a monetary instrument, you become a criminal, if you haven't filed the proper reports.

The proponents of the bill claim that attempted murder is a crime and therefore attempting to leave the country with monetary instruments is a crime. I think the comparison is outrageous. I see no justification in comparing attempts to leave the country with some of your assets as comparable to attempting a vicious crime.

So, I cannot see how we can accept an argument of what sort.

Title II authorizes warrantless searches of anything, including your mail. I think it could be interpreted that they could do wire tapping or whatever they wanted to do, not based on probable cause, but based on "reasonable cause to suspect." That is very, very loose language, and I think it is something we couldn't live with very easily.

We don't have to suspect even that a crime was committed. It is the present requirement that in order to get a warrant there had to be probable cause to suggest that a person had committed a crime or possessed contraband, but not under this bill. With this bill, it would

mean they would only have to have reasonable cause to suspect that a person has monetary intentions.

I think this is symbolic of an age drifting toward totalitarianism, and is certainly not an indication that we are a free country or leaning in that direction. It is something new and foreign to our ideals of freedom.

Another thing that is foreign to the ideals of freedom is the third title that rewards our citizens for spying on their fellow citizens. The informer program of offering rewards of up to $250,000 in order to report individuals who may be committing or not committing a crime, I think, is not the technique that should be used in a free society. This is again an example of a technique used in totalitarian countries.

I do think it very important to reemphasize the fact that this is not a drug bill. This is a money control bill. This is to control money moving in and out of the country. In the testimony before the Banking Committee, they claimed that they could tell there were a lot of money movements because they could detect it in bank accounts, and they were just certain it came from the buying and selling of drugs.

If this is the case, the best thing possible would be to allow that tracing system to exist. To further drive them underground, I think, would make it more difficult to follow drug movements if drug traffickers are already using the banking system.

All this would do is drive the criminals underground and then allow or at least expose honest citizens to the loss of their civil liberties.

The Constitution and our traditions have never authorized nor endorsed the checking and examination of individuals leaving our country. It is true that they have examined our suitcases coming into our country. The proponents of the bill have used this as a justification for looking in your suitcase as you leave. And they use the customs law, which was a very early law, dating back to 1789, as the legal instrument.

However, it has to be noted that the custom law of 1789 preceded the ratification of the fourth amendment, which occurred in 1792. So, I believe that if the fourth amendment had already been law that it should have been questioned whether or not Government agents could examine our suitcases coming in under reasonable cause instead of probable cause.

There was one statement made in the Banking Committee that I thought was rather reflective of the age that we live in. It was also suggested here today that individuals with assets, if they arrive at the airport and they are going out, "you mean to say"—this is what the gentleman said—"they could get on an airplane and they would be free?" That is what a U.S. Congressman said.

I think it rather sad to think that people leaving our country with their assets are "going to freedom." The Bamboo Curtain and the Iron Curtain were put up to hold people in. This is the beginning of our iron-type curtain, to curtail the freedoms and liberties of Americans to move their bodies and their persons and their property from this country to another country.

It is characteristic of an age of inflation where people do seek out to transfer wealth and protection of their assets. And I don't think we should ignore that fact. We certainly should not ignore the fact nor

pretend that we are actually controlling drugs, because I think that issue is a smokescreen.

Another statement was made that if you "are doing nothing illegal, then what is the difference" if the Government can come in and examine what you do? This is outrageous when you think of what that means. That means if you have nothing to hide, then there is no reason they can't be in our houses, in our pocketbooks, on our telephones, in our mail.

We may not have anything to hide as individuals, but we have something to protect, and that is our freedom, and we must urge the people to concentrate and be concerned about that over and above anything else.

I would like to mention a recent court case that I think has significance to our hearings today. Recently the Supreme Court of the United States left intact a ruling of the California Supreme Court that the police need a search warrant to search suitcases and other containers found in a stolen car. According to the news report in the Washington Post, "The ruling followed past high court rulings that established the police need for warrants to search luggage in a car, even luggage suspected of containing contraband. The Court left intact the California Supreme Court ruling that even car thieves have a right to the privacy of concealed contents they place in a stolen vehicle."

If this bill passes, the average citizen's right will be less than the average car thief's rights. It may be the best way to avoid the customs agent's coming up and going through your suitcase as you leave just to claim it is a stolen suitcase, and that he has no right to do it, and possibly it may come to that.

I suggest that this Congress is bound by the plain language of the Constitution. I for one have not had my mind cluttered with a law degree. We as citizens of the United States are capable of reading the Constitution, and we are obligated to interpret it. We have a responsibility to follow the Constitution as it is written. We are not obligated, and as a matter of fact, I think it is necessary that we do not accept anybody in any agency of the Government to do the interpretation of the Constitution for us. All we have to do is to be able to read and to understand English.

Above all else, we must be willing to protect the Constitution and be willing to protect our freedoms.

The fourth amendment is very, very simple. Anybody can understand it. The only people who don't seem to be able to understand it are the ones who have been confused by going into the courts and pretending to know better than the authors of the Constitution.

And the Constitution says:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause * * *.

That is simple, plain, and clear. And that is it. And that is our obligation. As representatives of the people, we should not violate that law, and it is the law of the land.

Chairman Vanik has received a letter recently from a gentleman in Illinois. I would like to quote from that letter.

He said:

I have a past involvement in law enforcement and am the founder of two drug rehabilitation agencies. There is no way H.R. 5961 will dent the drug traffic. What you are succeeding in doing is just making another law, something that many of you have been doing for years, and the results can be seen daily. I would agree with all of Congressman Ron Paul's comments regarding the infringement of personal rights, but the overriding factor is the absolute worthlessness of the law.

I cannot say it better than this gentleman. I urge the subcommittee to report this bill unfavorably, and urge that its life be ended before it reaches the House floor. If this is done, you will have done a great service to the people of the United States.

[The prepared statement follows:]

STATEMENT OF HON. RON PAUL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I am happy to appear before the Subcommittee on Trade this morning to present my view of H.R. 5961, and I commend you for scheduling this hearing. I have received dozens of letters from all over the country opposed to this bill, and I have yet to receive one in favor of it. I understand that other Members of Congress have also received a great deal of mail in this bill, and that those letters have also been uniformly opposed to this bill.

One can make two assumptions about this mail. First, one can assume that all the writers are drug smugglers who believe that business would be hurt by this bill. I regard that possibility as ludicrous. Second, one can conclude that the hundreds of letters that have been received are from people who sincerely perceive a threat to freedom in H.R. 5961. I believe that this latter assumption is correct, and I believe that these people are right in perceiving a threat of freedom. In a few moments, I will explain why.

As I stated, I have not received one letter from anyone who favors the bill. Perhaps some Member of Congress has, but I have not. I am confronted then, with a piece of legislation which no constituent wants, but which is eagerly, almost embarrassingly, desired by the Administration. The government wants this bill, and wants it badly. The people do not. Shall this Congress do the will of the people or the will of the Administration? That is one of the first questions we must answer. Are we representatives of the Department of Treasury and Justice, or are we representatives of the American people? I think the answer is obvious, and I hope that the action taken by this honorable Subcommittee reflects that answer.

This confrontation between what the people want and what the government wants is not a slight issue, for their disagreements go to the very foundation of our constitutional system. The letters I have received allege that basic rights would be infringed by this legislation were it to become law. I agree. But the government has written letters expressing its opinion that the legislation is constitutional and that its passage would harm no one's rights. These letters have been cited repeatedly by the sponsors of this bill whenever the constitutional issue is raised. I suggest, however, that these letters are comparable to the opinions of a thief regarding the legitimacy of theft. Soliciting the Justice Department's opinion of the constitutionality of H.R. 5961 is a bit like asking a fox if it's OK to steal hens. The Justce Department—and the entire Administration—has an axe to grind, and its opinions on constitutional law must be examined rather skeptically.

H.R. 5961—NOT A DRUG BILL

With that out of the way, let us begin an examination of the bill itself. The bill was sold to the Banking Committee and is being sold to the Congress as a drug trafficking control bill. I quote from the remarks of a proponent of this bill as typical of the rhetoric that has surrounded the bill's movement through Congress:

"Drug abuse in this country has reached astounding proportions. One of the reasons that drug abuse continues, and that the supply of illegal drugs is so prevalent, is because of a few unintentional loopholes in the Bank Secrecy

Act. . . . H.R. 5961 has received strong endorsement from the administration—to help in the fight against international drug trafficking."

At the previous hearing on this bill held by this Subcommittee, one witness testified that H.R. 5961 will have a "significant" effect on controlling drug traffic, and he defined "significant" as "100% improvement." The Commissioner of Customs has expressed his opinion that "this Act can be a potent weapon in the Federal Government's effort to stop illegal drug trafficking." This bill has even become popularly known as the drug trafficking control bill.

I would have no objections to any of this if, indeed, that is what the bill is. But I call your attention to the text of the bill itself. It does not contain even the most oblique reference to drug trafficking. It states quite clearly, however, that it would make it illegal to attempt to import or export unreported monetary instruments, that it would allow customs officials to search for such instruments just as they would search for contraband, and that it would establish an informer program to catch smugglers of these moneary instruments.

If one can get past the rhetoric about the bill and examine the bill itself, it is undeniable that the bill is not a drug control bill, but a money control bill, and only a money control bill. When I offered an amendment in the Banking Committee that would have written a provision about drug trafficking into H.R. 5961, my amendment was vigorously opposed by proponents of this bill, and it was defeated. This is not a drug control bill. It mentions only monetary instruments, not drugs, and it is vital that this fact, which has been obscured by the administration, be recognized.

How, then, can a money control bill be used to fight drug trafficking, as some claim? Obviously, it can be used only if the monetary instruments are more easily detected than the drugs themselves. Let me be clear on this. The government has failed to stop international drug trafficking, i.e., it has failed to detect drugs smuggled across borders. Senator DeConcini is holding hearings in Phoenix this week to investigate the "drug glut" in this country. The Senator says that his Subcommittee has "already accumulated some convincing evidence that the illicit drug trade in America is at an all-time high. It appears that drug-related deaths are up nationwide, the amount of heroin entering this country from southwest Asia is enormous, and federal and local law enforcement officials are finding it almost impossible to keep up." The director of the drug treatment and prevention programs in New York State recently stated that "The supply of heroin is greater and the heroin stronger and the price cheaper than any time in the last twenty years." The General Accounting Office has reported that "Federal supply reduction efforts have not had a significant impact on the overall drug problem." One can only conclude from this that the federal drug trafficking control program has been a complete failure. The same people who have failed to detect drug smuggling are now asking us to believe that they can detect the smuggling of monetary instruments. What is a "monetary instrument?" It is not, as some have guessed, merely currency. It is virtually anything the Treasury decides. Let me quote from the law inself:

"The term 'monetary instruments' means coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of travelers' checks, bearer negotiable instruments, bearer investment securities, and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify . . ."

We are being asked to believe that agents who can't detect drugs are able to detect travelers' checks or stocks. That assumption, upon which this bill is based, is absurd. But the shift in the attention of the government from drugs to "monetary instruments" is ominous. It will involve the activities of millions more people, which itself is another reason for the absurdity of treating monetary instruments as contraband. Not only is the government asking us to believe the fairy tale that it can control drug trafficking better by searching for items more easily concealed and carried by millions more people, but it intends to inhibit the actions of persons engaged in inherently innocent activity, carrying money.

This bill would transform that innocent action, carrying or transporting monetary instruments, into carrying contraband. It would greatly enlarge the scope of the government's present activities to the detriment of the freedom and convenience of the American people. And there is absolutely no reason to believe that this infringement of freedom and creation of inconvenience will be of any help in controlling drugs. In fact, drug control will become more difficult should this bill become law, simply because millions more people carry money than drugs, and money is more difficult to detect.

TITLE I

Title I of the bill amends the Currency and Foreign Transactions Reporting Act so that a person who transports or causes to be transported or attempts to transport or receive monetary instruments into, out of, or through the United States without filing a report with the government is guilty of a crime and liable for civil and criminal penalties ranging up to $500,000 in fines and 5 years in prison, in addition to forfeiture of the monetary instruments seized.

The argument has been made that the provision making it a crime to attempt to transport unreported monetary instruments is in keeping with the uniform practice of making an attempt to commit a crime itself a crime. I believe, however, that there is one key difference. If, for instance, one is convicted of attempted murder, it usually, if not always, means that one has attempted murder and failed. One had shot the victim, but he lived, or one had poisoned his food, but he skipped a meal. That meaning of "attempt" is fairly clear. But what can "attempt" mean in this bill? Does it mean that one is trying to leave the country with monetary instruments and one's plane crashes just short of the border? No, it means something quite different.

The Administration feels it necessary to have this "attempt" provision in order to avoid events such as those that ensued after the arrest of one Henry Gomez-Londono in New York. In its decision on that case, the U.S. District Court for the Eastern District of New York held that Gomez-Londono, who had not checked himself in as an airline passenger nor surrendered his ticket for passage from New York to Colombia, had not transported any monetary instruments and therefore had not violated the law. Specifically, the Court declared:

"It may be suggested that the statute [the Currency and Foreign Transactions Reporting Act] would be defeated of its purpose if liability did not attach until the moment of departure. That does not appear from the facts of the present case, nor does it appear as a likely consequence in general of a reading of the statute and the regulations which confines them to the plain meaning of the word used . . . The purpose of the Act is not to garner transgressions but to secure disclosure of the Currency movements and the identities of those bringing them about."

Evidently the Administration has a very broad view of what constitutes transporting monetary instruments and thus may be expected to have an equally broad view of what constitutes an attempt. Perhaps, as in Gomez-Londono's case, it will be purchase of an airline ticket. Perhaps it will be possession of a passport. Perhaps mailing of a letter containing monetary instruments or presence at a post office. Who knows? The point at which an action becomes an attempt is left to the discretionary wisdom of the Treasury Department. In its decision reversing the District Court's judgment in the Gomez-Londono case, the Appeals Court referred to the present law as one which may "charitably be described as ambiguous." If H.R. 5961 is added to it, I believe that it would be unconstitutionally vague.

TITLE II

Title II of the bill is probably the most controversial, for it empowers "any customs officer" to "stop, search and examine without a search warrant, any vehicle, vessel, aircraft or other conveyance, envelope or other container, or person entering or departing from the United States on which or whom he shall have reasonable cause to suspect there are monetary instruments in the process of being transported for which a report is required. . . ."

I would like to point out several things about this language. First, no one and no object is exempt from such warrantless searches. That means persons, vehicles, mail, and I must conclude, telephonic and telegraphic signals. It is difficult to avoid the conclusion that this section authorizes not only strip searches for money of persons leaving or entering the U.S., opening of letters leaving or entering the U.S., searches of vehicles entering or leaving the U.S., but also warrantless wiretapping. That conclusion is based not only on the broad language of Title II, but also the sweeping definition of monetary instruments which may easily comprehend electronic transfers of funds.

Second, no search warrants would be needed under this provision.

Third, reasonable cause, not probable cause, is the criterion named. When asked the meaning of this phrase during debate in the Banking Committee, the sponsor of the bill indicated that it was a phrase used by the Supreme Court and did not offer a definition. In any event, it is a weaker standard than probable cause.

Fourth, the customs officer need not suspect that any crime has been committed or is about to be committed. This point deserves some emphasis, for a letter circulated by the bill's sponsor refers to searches for "illegal currency." The Title says nothing about currency, but speaks only of monetary instruments; nor does it refer to illegal monetary instruments. It refers only to "monetary instruments . . . for which a report is required." Such instruments might be entirely legal; a report might already be on file for them. Yet this bill grants customs officers the right to search anyway, with no suspicion of a crime involved.

Fifth, under the law (19 U.S.C. 1401), a "Customs Officer" is "any officer of the Bureau of Customs of the Treasury Department . . . or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to peform any duties of an officer of the Customs Service." It is bad enough that this class of government agents called "customs officers" is authorized to violate the Fourth Amendment to the Constitution with impunity, but it is even worse when we find that the Secretary of the Treasury may designate anyone a customs officer. Moreover, this power of the Secretary is itself delegated to subordinates within the Customs Service. It is intolerable that any government agents should operate outside the Constitution, but to give unconstitutional powers to an indefinite and expandable class of agents is sheer folly.

Sixth, for the first time, this bill would give the Customs Service statutory authority to search persons leaving the country. My staff has been unable to find any such authority in the law, and the Customs Service has also failed to provide us with any language authorizing such exit searches. I think that this innovation is very important, because it establishes, for the first time, that American citizens will not be free to travel abroad with their property. Such exit searches and regulations are characteristic of totalitarian states, not free societies.

Finally, this Title obviously violates the Fourth Amendment to the Constitution which proscribes unreasonable searches and seizures, and defines unreasonable searches as warrantless searches. In this regard, it is instructive to recount a little history. In its Analysis and Interpretation of the Constitution, the Congressional Research Service says that:

"In the colonies, smuggling rather than seditious libel afforded the leading examples of the necessity for protection against unreasonable searches and seizures. In order to enforce the revenue laws, English authorities made use of writs of assistance, which were general warrants authorizing the bearer to enter any house or other place to search for and seize 'prohibited and uncustomed' goods . . ."

Does this sound familiar? Of course the present Administration is not enforcing the Revenue laws; it claims to be enforcing the drug laws. And, of course, it does not issue writs of assistance, but would authorize warrantless searches and seizures. And further, the goods in question are not "uncustomed," but unreported. The Fourth Amendment was incorporated into the Constitution to avoid precisely what H.R. 5961 would do. I trust that this government will not be so foolish as George III and try to impose its will on an unwilling people.

Recently the Supreme Court of the United States left intact a ruling of the California Supreme Court that police need a search warrant to search suitcases and other containers found in a stolen car. According to the news report in the Washington Post, "The ruling followed past high court rulings that established the police need for warrants to search luggage in a car, even luggage suspected of containing contraband . . . The Court . . . left intact the California Supreme Court ruling that even car thieves have a right to the privacy of concealed contents they place in a stolen vehicle."

I can only conclude from this news report that if H.R. 5961 becomes law, car thieves will enjoy a right to privacy that law-abiding citizens will not enjoy. Perhaps the citizen who is leaving the U.S. should inform the border police that his wallet is stolen so that they will have to get a warrant before searching it.

I suggest that this Congress is bound by the plain meaning of the Fourth Amendment, that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probably cause . . ."

If we have created a class of government agents that are empowered to violate this amendment, let us correct our mistake. Let us not compound it by expanding the pretenses under which privacy might be destroyed.

TITLE III

Title III of the bill would establish an informer program to reward those who aid in the arrest and conviction of smugglers of monetary instruments. The Internal Revenue Service operates a similar program whereby envious persons can turn in their neighbors and profit from it.

Programs such as these are also characteristic of totalitarian states. Many people have objected to the practical problems that invariably arise with such programs. My objection concerns the moral problem. The government is attempting to set a citizen against citizen through these programs in the age-old device of divide and conquer. The Communist states have the program down to a science, and we are fast moving in that direction. Bear in mind that this title does not deal with drug smugglers. Nothing in the whole bill does. It deals with people who take monetary instruments across borders and fail to tell Big Brother where they are going or how much they have. The rewards are not for those who help in the apprehension of drug smugglers. They are for those who help in the apprehension of money smugglers. This bill completes the framework created in 1970 for currency and exchange controls, and we should have no delusions about fighting drug peddlers. The bill deals solely with money, not drugs.

CONCLUSION

In conclusion, Mr. Chairman, let me quote from a letter that was addressed to you from a gentleman in Illinois. He writes: "I have a past involvement in law enforcement and am a founder of two drug rehabilitation agencies. There is no way H.R. 5961 will dent the drug traffic. . . . What you are succeeding in doing is just making another law, something that many of you have been doing for years, and the results can be seen daily. I would agree with all of Congressman Don Paul's comments regarding the infringement of personal rights, but the overriding factor is the absolute worthlessness of the law."

Mr. Chairman, I cannot say it better than this gentleman. I urge this Subcommittee to report this bill unfavorably and urge that its life be ended before it reaches the House floor. Thank you.

Mr. FRENZEL [presiding]. I want to thank you for your testimony.

I assume that you don't like the law now that requires the registration of more than $5,000 being taken from the country, which of course will be $10,000 July 1. Is that correct?

Mr. PAUL. I would oppose that law; yes.

Mr. FRENZEL. And that is the basis for your not liking the attempting to take the money out either?

Mr. PAUL. Right. I don't like it on constitutional grounds.

Mr. FRENZEL. Would you agree that it is now legal to conduct a warrantless search on reasonable cause for contraband?

Mr. PAUL. Under what circumstances?

Mr. FRENZEL. Well, when you return to the United States and the customs agent goes through your suitcase looking for heroin or undeclared merchandise, is that a legal search or not?

Mr. PAUL. I would say that there is quite a bit of difference between those leaving or those entering the country. First, your example concerns entry into the country, and the agents are looking for contraband, not monetary instruments, which is a vaguely defined term. Also, this power stems from a law that was passed prior to the fourth amendment. I would say it would be a lousy precedent to allow the expansion of the authority of the Government to look at your suitcase on exit. It would be a poor excuse to expand the role of Government.

Mr. FRENZEL. Well, as I understand it, they can look for contraband on the way out as well.

Mr. PAUL. There is no statutory authority for exit searches. The thing that we have to be careful about here is not to allow us to slip

into the definition that our wallets are contraband. I think this is what would happen. And it isn't accidental, because even in the title of the bill it suggests that these are to be handled in a similar way. It says, "to allow U.S. customs officials to search for currency in the course of their presently authorized search for contraband." So, therefore, currency then would be treated as contraband according to the title of the bill, and I think that again expands the power of the Government, which is very dangerous.

Mr. FRENZEL. Of course, it would not be contraband unless it was unreported.

Mr. PAUL. This is true, but the carelessness with which these laws are enforced, I think, is something to be aware of.

Mr. FRENZEL. Yes.

Mr. PAUL. Under the bank secrecy law, we had the case of a lawyer who called from California and said he had a client, who had sent money from California to Texas, over $1 million, and because the authorities knew about this and suspected it could have been related to drugs, they confiscated the money. Then, when they discovered and confirmed that it was not related to drug trafficking, they claimed it might have entered the country illegally, so they decided to keep the money anyway.

So, I think what the Government authorities do sometimes is frequently much more than we would have like them to do, and under the terms of this bill, I think it is way too much authority. So, when you think of its careless enforcement, which I think we could expect, I think that should alert us even more so.

Mr. FRENZEL. I agree with you that enforcement is often overenthusiastic.

I thank you for your testimony.

Is Leon Friedman here to testify?

Would you like to testify now?

STATEMENT OF LEON FRIEDMAN, PROFESSOR OF LAW, HOFSTRA UNIVERSITY, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. FRIEDMAN. Yes.

Mr. FRENZEL. Do you have a statement?

Mr. FRIEDMAN. I do have a statement.

Mr. FRENZEL. It will be submitted into the record, and you may read from it or excerpt from it.

[The prepared statement follows:]

STATEMENT ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION

My name is Leon Friedman and I am a Professor of Law at Hofstra Law School in Hempstead New York, teaching criminal procedure and constitutional law. I welcome this opportunity to testify on behalf of the American Civil Liberties Union concerning H.R. 5961. The proposed bill adds various provisions to the Bank Secrecy Act, 31 U.S.C. §§ 1101(a), 1105. Our particular concern is the proposed amendment to Section 1105 which allows "any customs officer" to "stop, search and examine any vehicle, vessel, aircraft . . . envelope or other container, or person entering or departing from the United States on which or whom he shall have reasonable cause to suspect there are monetary instruments" for which a report is required under the Act.

What the proposed bill would do is to permit every person leaving this country to be physically searched and every piece of luggage or container down to an envelope to be searched without a warrant by any customs officer on his reasonable suspicion that the person or container might have more than $5,000 in monetary instruments which were not reported as required by law.

The bill would revolutionize existing laws with respect to international travel, greatly burden and inconvenience innocent citizens and violate the right to privacy of millions of Americans. It is the position of the A.C.L.U. that H.R. 5961 is probably unconstitutional, is certainly undesirable, and it is absolutely unnecessary in any event.

A. CONSTITUTIONALITY

At present there is no statutory authorization for any search of the physical person of Americans as they leave this country. Section 401(a) of Title 22 permits the seizure of illegal arms or munitions upon a showing of probable cause that the arms are being exported in violation of law. But this section relates to the seizure of goods generally in large containers and not likely to be found on a person leaving the country. Furthermore the law requires probable cause before any seizure can take place. Section 1581 of Title 19 broadly allows customs to search vessels or vehicles violating the navigation or other laws of the United States. Once again there is no reference to the search of persons.

There are laws permitting the search of persons as they enter the United States. Section 482 of Title 19 permits the search of vehicles and persons on which or whom a customs officer has "reasonable cause to suspect there is merchandise whichh was imported contrary to law." It is this statute which is apparently the model for H.R. 5961.

The difference between a search of a person coming into the country and one leaving the country is crucial to the understanding of the defects in the proposed law. In the leading case on the subject, *Carroll* v. *United States*, 267 U.S. 132, 153–54 (1925) the Supreme Court said:

Travellers may be . . . stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in."

The Court added:

"But those lawfully within the country . . . have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

This distinction has been upheld in a long series of Supreme Court cases permitting border searches in a variety of situations. See *United States* v. *Ramsey*, 431 U.S. 606 (1977) (permitting warrantless search of incoming international letter mail). *United States* v. *Brignoni-Ponce*, 422 U.S. 873 (1975) (roving patrol may stop car near border if reasonable suspicion exists that illegal aliens may be present). *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976) (stop but not search of car at fixed point near border permitted). But *cf. Almeida-Sanchez* v. *United States*, 413 U.S. 266 (1973) (roving patrol search of car not permitted).

It is obvious that the national interest in searching incoming travelers is of a different order than searching those departing. Such border searches may be necessary to keep out contraband that might have harmful effects within the country. No nation wants illegal arms or narcotics or other dangerous objects introduced into the nation. Customs laws require duties to be paid on certain merchandise. Each country requires that guests into the country have proper visa documents. Border searches of those coming in is simply an aspect of national self-preservation, as recognized in the *Carroll* case. This government interest weighs heavily when measured against other personal rights. Even here, however, the personal right to travel is protected by the reasonableness requirements of the Fourth Amendment. See *Almeida-Sanchez* v. *United States*, *supra*.

The government interest in searching travelers leaving the country cannot be justified in the same way. There is no comparable interest in national self-preservation that is served by such a search. Travelers leaving the country are protected by the fullest panoply of constitutional rights and the government interest that is measured against those rights is not as strong.

The Supreme Court decision in *Kent* v. *Dulles*, 357 U.S. 116 (1958) underscores this distinction. In that case a passport was refused to Rockwell Kent by the Secretary of State on the ground that he was a Communist and consistently adhered "to the Communist Party line." The State Department argued that its

right to withhold a passport was necessary to protect the country's internal security. The Supreme Court rejected that argument. It held that the statutory authority granted the Secretary did not permit him to withhold passports on the asserted grounds. The Court noted that the right to leave this country and travel throughout the world "is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment." 357 U.S. at 125. "Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."

To burden that freedom of movement by permitting searches of millions of Americans who travel abroad on the basis of "reasonable cause" would violate the principles of *Kent* v. *Dulles*. This is not a situation where customs officials are looking for contraband—narcotics, illegal guns, and the like—or items of commerce for which no duty has been paid. Customs officers will be looking for currency, travelers checks, bank drafts, which every single traveler must have in some quantity. Every American is a potential target for a full body search. On what basis can a customs official decide that one traveler has more or less than $5000 in monetary instruments which he has not reported? The standard is impossible to apply in this context without a potential for abuse of enormous proportions.

The Supreme Court has but recently emphasized the importance of proper standards for searches of American citizens *Ybarra* v. *Illinois*, 48 U.S.L.W. 4023 (November 28, 1979). In that case the state of Illinois had passed a law permitting a search of anyone on premises being searched pursuant to a search warrant. The defendant was in a bar when the police came in with a search warrant looking for heroin. Each patron of the bar was patted down. When a police officer felt a cigarette pack on one patron, he took it from him and found some heroin in tinfoil packets. The Supreme Court found that the Illinois law permitting such a search was unconstitutional. The search in that case could not be justified as a Terry search for weapons. (*Terry* v. *Ohio*, 392 U.S. 1 (1968).) The Court emphasized that any search on less than probable cause must be carefully scrutinized. "The Terry case created an exception to the requirement of 'probable cause,' an exception whose 'narrow scope' this Court 'has been careful to maintain.'" 48 U.S.L.W. at 4025. Only if a police officer has a reasonable belief or suspicion may a search be made and the search must only be for weapons, not contraband in general; "nothing in Terry can be understood to allow a generalized 'cursory search for weapons' or, indeed, any search whatever for anything but weapons."

In anything except the search for weapons, the normal probable cause standard must be applied. "The 'long prevailing' constitutional standard of probable causes embodies the best compromise that has been found for accommodating the often opposing interests in 'safeguard[ing] citizens from rash and unreasonable interferences with privacy' and in 'seek[ing] to give fair leeway for enforcing the law in the community's protection.'" *Ibid.* at 4026.

In another case, *Dunaway* v. *New York*, 442 U.S. 200 (1979) the Supreme Court held that custodial questioning of a suspect based on reasonable suspicion—as opposed to probable cause—violated the Fourth Amendment. In that case a defendant was brought to a police station but not arrested. He was questioned about a killing that occurred. After an hour, he confessed to the crime. The state agreed that there was no probable cause to arrest the defendant before his confession. The issue then became whether he could be taken into custody and questioned based only on a reasonable suspicion that he committed the crime. Once again the Supreme Court emphasized the importance of probable cause as a constitutional standard and the limited nature of searches or seizures that could be accomplished under a reasonable suspicion standard. "The central importance of the probable cause requirement to the protection of a citizen's privacy afforded by the Fourth Amendment's guarantees cannot be compromised. . . . Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment. . . . The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience. . . . and provides the relative simplicity and clarity necessary to the implementation of a workable rule." 442 U.S. at 213. See also *Delaware* v. *Prouse*, 440 U.S. 648 (1979) (random checks for driver's license and proper vehicle registration not permitted on less than articulable reasonable suspicion).

Last year the Supreme Court, in an unanimous decision written by Chief Justice Burger, declared unconstitutional a Texas law that required a citizen to identify himself when asked to do so by a police officer. *Brown* v. *Texas*, 443 U.S. —— (June 25, 1979). The Court held that even asking for identification was a "seizure" within the meaning of the Fourth Amendment. Although the officer claimed that the defendant looked suspicious, the Court found that objective facts on suspicion were lacking.

B. DESIRABILITY

Congress must decide whether it wishes to grant customs officials this broad power to search every American leaving this country and every container and piece of luggage with him down to an envelope looking for monetary instruments of $5000. The statutory standards "reasonable cause to suspect" is so minimal in terms of the search for money that every American is a potential target for a search. The Supreme Court cases listed above indicate that any standard below probable cause must be narrowly confined to special situations such as the need to protect the physical safety of an officer. Obviously we have nothing like that situation here.

In only one other provision in the U.S. Code does the term "reasonable cause to suspect" exist (besides the customs provision previously mentioned). Section 1357(c) of Title 8 permits a search and seizure when there is reasonable cause to suspect that an illegal alien is about to enter the country. Such searches are of a totally different nature and involve the considerations mentioned in the *Carroll* case. Congress should not take this revolutionary step without a more careful consideration of the desirability of such searches.

C. NECESSITY

There is no showing made by the government for the need for this kind of change. Unless and until the government can show that serious abuse exists and can be solved in no other way should Congress even think of this type of a provision.

In summary the ACLU is totally opposed to the provisions of H.R. 5691 permitting a search of American citizens leaving this country.

Mr. FRIEDMAN. I would just like, because of the lateness of the hour, to emphasize two or three points that are already in the statement. I am a lawyer, and I can speak a little more definitively about the constitutional problems, or I hope I can.

There has been a series of recent Supreme Court cases dealing with the problem of a search on less than probable cause, and those cases are as recent as 2 days ago where the Supreme Court decided two cases coming up out of New York entitled *Payton* v. *New York* and *Riddick* v. *New York*. They had decided a case in November of this year called *Ybarra* v. *Illinois* (48 U.S.L.W. 4023, Nov. 28, 1979). All of these, I think, indicated pretty clearly that this law would be unconstitutional.

I think the key distinction is the difference between a search of somebody as they come into the country and a search of somebody as they leave the country.

Now, in a whole series of decisions, the Supreme Court has said that a search of people or containers as they come into the country are part of our right for self-preservation. And I will quote from the key Supreme Court decision in this matter on the subject, and that is *Carrol* v. *United States*, a case from 1925.

The Supreme Court there said, "Travelers may be stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in and his belongings and effects which may be lawfully brought in."

It is very clear that they mean to approve searches when you come into the country. Now, when you come into the country you can bring

in a noxious substance, guns, drugs, whatever, and the Nation has a right to protect itself from those dangerous things being bought in. However, in the very next passage in that same case, the Court said:

> But those lawfully within the country have a right to free passage without interruption or search unless there is known to a competent official authorized to search probable cause for believing that their vehicles are carrying contraband or illegal merchandise.

That notion of free passage is not only free passage within the country but free passage within the country going out.

In a series of cases, the Supreme Court has said that American citizens have a constitutional right to international travel. That right to international travel is seriously undermined by this kind of law. In other words, there is a difference between people coming in and people traveling freely about within the United States and freely choosing to leave the United States. People when they leave or when they travel are subject to the full protections of the fourth amendment.

Those protections of the fourth amendment require two things: probable cause and a search warrant. This law undermines both of those requirements.

As recently as this year—and again, I am just quoting from Supreme Court cases, which really are the definitive interpretations of the fourth amendment, but last year in a case called *Dunaway* v. *New York* (422 U.S. 200, 1979) the U.S. Supreme Court said:

"Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment." That is the U.S. Supreme Court in June of 1979 dealing with a standard that would allow in that particular case the custodial interrogation of an individual based on mere suspicion. The magic point is probable cause; and more important, probable cause presented to a magistrate, who then issues a search warrant.

It is true on the way into the country a different rule applies. A different rule applies because of the need for self-preservation. It is that kind of an important need to protect the Nation against things that would create serious damage within, Mr. Chairman, that allows these border searches. But without that need for self-preservation the Supreme Court in a series of decisions outlined in my statement has said you must have probable cause, you must have a search warrant, and anything less than that would violate the fourth amendment.

Therefore, they declared an Illinois law unconstitutional that permitted a search on less than probable cause and without a warrant. It seems to me that searches within the United States or of Americans leaving the United States would be subject to that fourth amendment requirement.

The Justice Department in its most cautious expression on this issue, Mr. Chairman, considered this law to raise a serious constitutional issue, and in light of the very recent Supreme Court cases, all of them reaffirming the right to privacy, reaffirming the right to privacy in a home, reaffirming the right to privacy in your own person, it is even more important. Two days ago the Supreme Court said you cannot go into somebody's home to effect an arrest, because the prime purpose of the fourth amendment was to protect the privacy

of the home. Those were laws which New York State had passed which permitted those kinds of searches.

It seems to me a congressional law that permits a search of the person as you leave the country is even in a more vulnerable position. So I think the distinction between leaving and entering is crucial.

There are a few minor decisions in the lower courts which have permitted searches on the way out. All I can tell you is, the Supreme Court has never done it, and the four or five Supreme Court cases over the last 2 years leading up to *Payton* and *Riddeck*, which were decided just 2 days ago, look in the other direction and make it, I think, fairly clear that this law would be considered unconstitutional.

I think the same would be true as far as search of international mail is concerned on the way out. We have exactly the same problem in that situation.

Mr. FRENZEL. Congresman Paul, who advised us that his mind was uncluttered by a legal degree—and I must confess mine is similarly vacuous—advises us we should read the fourth amendment. The fourth amendment doesn't say anything about going in or out of the country.

Mr. FRIEDMAN. Well, obviously, the fourth amendment has to be interpreted. Over a period of time, the general clauses of the Constitution have had to be interpreted with specific fact situations in mind. The Supreme Court in interpreting border search cases had emphasized the need for national self-preservation. That is the key to the whole thing.

Mr. FRENZEL. And that is why we are allowed to have the search for weapons when we all fly out of the country?

Mr. FRIEDMAN. You don't have a search. There is no statutory authorization for searching a person for weapons as he leaves the country. Now, if you have probable cause to search——

Mr. FRENZEL. Doesn't everybody walk through the little magnetic cage, and isn't your luggage subjected to the same kind of search?

Mr. FRIEDMAN. They are allowed to do that only because you are going onto an airplane and not because you are leaving the country.

Mr. FRENZEL. The fourth amendment, I don't recall, made a distinction between airplanes or boats or going on foot.

Mr. FRIEDMAN. Obviously, they did not have airplanes back in 1792, so they weren't making any of these distinctions.

Mr. FRENZEL. But you have been able to make them?

Mr. FRIEDMAN. Not I. The Supreme Court has had to face every one of these situations, and they passed on each of these variations from the simple language of the fourth amendment. They have had to draw some lines. Every court has to draw a line somewhere, and the line they have drawn after 180 years of experience, after thousands of cases dealing with the fourth amendment, those lines make very clear that there is a distinction between, No. 1, searches for weapons as you go on an airplane—because that would be true when you travel from Washington to New York, you know. That is not a border search problem. That is a very particular problem relating to the kind of hijacks that we had over a period of time, and it is reasonable to search for a weapon when you are dealing with an airplane.

Mr. FRENZEL. Is hijacking a worse crime than dope peddling?

Mr. FRIEDMAN. Well, it is not a question of what is the better or worse crime. It is a question of balancing a government need on the

one hand with the invasion of privacy on the other, and the Supreme Court has given us the weapons to make those balances and to make those measurements, and what they have said about free passage in the United States or international travel, traveling out, the constitutional right to travel out is that the individual's interest in privacy is of a very high level.

The Government interest on the other side—and when it is coming in, that is another thing, because you have a national self-preservation, but the Government interest in preventing hijacking is again of a very high level, but the Government's interest in preventing the passage of more than $10,000 in monetary instruments that have not been reported, Mr. Chairman, is nowhere near what we are talking about.

Therefore, under these recent Supreme Court cases, four or five of them in the last year, I just have no doubt that that kind of balancing is not going to be upheld in favor of a search for monetary instruments on the way out.

Mr. FRENZEL. I explained to you the lack of experience I have in this field, but I find it very difficult to draw a parallel between the entry and the exit from the country.

I do thank you for your testimony.

We will declare the meeting saved by the bell. Thank you.

The subcommittee will come to order again at 2 p.m. or some time close to that.

[Whereupon, at 1 p.m., the subcommittee was recessed to reconvene at 2 p.m.]

AFTERNOON SESSION

Mr. VANIK. The subcommittee will be in order.

The business before the committee is H.R. 6453, a bill to amend the tariff schedules of the United States regarding the rate of duty that may be proclaimed by the President on sugar imports. The panel is the Sugar Users Group: E. Linwood Tipton, accompanied by Mr. Stanton; the U.S. Cane Sugar Refiners' Association, Mr. Kominus; and the U.S. Beet Sugar Association, Mr. Carter.

Mr. Carter, do you want to testify separately?

Mr. CARTER. I will testify separately.

Mr. VANIK. All right. You may proceed.

Your entire statement will be admitted into the record. You are invited to read excerpts from it.

STATEMENT OF NICHOLAS KOMINUS, PRESIDENT, U.S. CANE SUGAR REFINERS' ASSOCIATION

Mr. KOMINUS. Mr. Chairman, my name is Nicholas Kominus. I am president of the U.S. Cane Sugar Refiners' Association.

Our industry refines and distributes practically all of the sugar that is imported into the United States.

I appear here today in support of H.R. 6453, a bill that would permit the President to reduce the duty on imported sugar to near zero: .01 cent a pound, to be specific.

I wish to commend the chairman for his efforts in getting the duty on imported sugar reduced earlier this year from 2.8125 cents to the statutory minimum of 0.625 cent a pound, and for introducing H.R. 6453.

In recent months, the world price of raw sugar has nearly tripled. As a result, the market price for raw sugar in the United States has been far in excess of the Government's market price objectives, which is 15.8 cents a pound. Yesterday the spot price for raw sugar, duty paid, at New York, stood at 23.05 cents a pound. That is over 7 cents a pound or nearly 50 percent more than the Government's price objective.

The world raw sugar price is strong and the futures market suggests that the price will continue to remain strong.

In light of this, there is no justification whatever for continuing to subject consumers to a duty on sugar. The duty is not needed to protect domestic sugar producers.

Even if the duty is reduced, as provided for by H.R. 6453, the price of raw sugar, based upon yesterday's market, would still be nearly 7 cents a pound in excess of the Government's price objective.

Of course markets go up and markets go down. If the price of raw sugar drops considerably, the President can increase the duty on sugar all the way up to 2.8125 cents a pound.

In recent years, two Presidents have responded to depressed sugar prices by doing so. In 1976 President Ford increased the duty from 0.625 cent to 1.875 cents a pound. And in 1977, President Carter increased the duty from 1.875 cents to 2.8125 cents a pound.

In addition, we are presently operating under a Presidential proclamation that provides for an import fee on imported sugar, if necessary, to respond to changes in world sugar prices. The proclamation provides for automatic, mandatory imposition and adjustments of the import fee.

A substantially decline in world raw sugar prices would automatically and promptly trigger an import fee on sugar imports.

Thus, adoption of H.R. 6453 and a subsequent reduction in the duty to near zero would not prohibit future increases in the import duty nor an import fee, if necessary.

Although sugar imports account for only around 30 percent of the sweetners we consume in the United States, they are nonetheless important because, among other things, the prices of domestically produced sugar and corn sweeteners are influenced by the price of imported raw sugar.

A reduction in the sugar duty will, therefore, not only impact the price of imported sugar, but the price of other sweeteners as well.

Sugar is an important ingredient in many food products, and a reduction in the duty on sugar will, therefore, help the fight on food price inflation and save consumers millions of dollars.

We respectfully urge the subcommittee to adopt H.R. 6453.

Thank you.

Mr. VANIK. Thank you very much, Mr. Kominus.

Mr. Tipton?

STATEMENT OF E. LINWOOD TIPTON, ON BEHALF OF THE SUGAR USERS GROUP

Mr. TIPTON. Thank you very much, Mr. Chairman. My name is Linwood Tipton; I am the economist and executive assistant for the

International Association of Ice Cream Manufacturers and also chairman of the Sugar Users Group.

Mr. VANIK. You are accompanied by?

Mr. TIPTON. By Bob Devoy.

Mr. VANIK. Bob Devoy.

Mr. TIPTON. He is with the law firm of Riggin & Mason, Mr. Stanton's firm. Mr. Stanton was not able to be with us today.

Mr. VANIK. All right. Thank you.

Mr. TIPTON. The Sugar Users Group is an organization representing trade associations whose members are major users of sugar in the United States. The company members of the associations comprising the Sugar Users Group use over 60 percent of the sugar consumed in the United States.

I ask that the names of our members be made a part of the record.

Mr. VANIK. They will be included in the record.

Mr. TIPTON. The Sugar Users Group supports H.R. 6453 which would give the President authority to reduce duties on imported sugar from the present rate of 0.625 cent per pound to 0.01 cent per pound.

Approximately half of the sugar consumed in the United States is produced in foreign countries, and most of this is imported in the form of raw sugar. In recent years, price support programs for the domestic sugar industry have depended on the assessment of duties and fees on sugar imports to attain target price levels.

Thus, in theory at least the cost of raw sugar, CIF duty paid, New York, is the world market price of raw sugar plus the cost of freight, stevedoring, insurance, and other charges, plus duties.

At this time, time, freight, stevedoring, et cetera, carry a cost of about $1.10 to $1.20 per hundredweight which when combined with duties of $0.625 per hundredweight makes the U.S. price for raw sugar about $1.70 to $1.95 per hundredweight higher than the world price. This differential is subject to market conditions, and the actual difference may be greater or less than the theoretical difference.

The world market price of raw sugar is presently well above $20 per hundredweight, whereas the generally accepted target price of raw sugar for the United States is only $15.80 per hundredweight. Obviously, we do not need a duty of $0.625 per hundredweight in order to achieve the domestic price objective.

Given present conditions in the world sugar market, it is our opinion that world raw sugar price levels will remain above the domestic target price at least through the 1980 to 1981 crop year. This will provide the domestic industry very attractive price levels without the addition of protective duties.

Even if we should be wrong in this judgment, the President would still have the authority to increase the duties and to impose import fees as necessary up to $0.028 in order to achieve the target price for the domestic industry.

Meanwhile, the virtual elimination of this duty will provide a meaningful cost reduction to consumers in the United States without in any way endangering any protection the administration wishes to provide for domestic sugar producers.

Mr. Chairman, we thank you very much for the opportunity to appear, and we thank you also for introducing the bill and for your continued support for fair sugar prices in the United States.

[An attachment to the statement follows:]

MEMBERS OF THE SUGAR USERS GROUP

American Bakers Association.
American Frozen Foods Institute.
Associated Retail Bakers of America.
Biscuit and Cracker Manufacturers' Association.
Chocolate Manufacturers Association of the United States of America.
Flavor and Extract Manufacturers Association.
International Association of Ice Cream Manufacturers.
International Jelly and Preserve Association.
Milk Industry Foundation.
National Bakery Suppliers Association.
National Association of Fruits, Flavors, Syrups, Inc.
National Food Processors Association.
National Soft Drink Association.
National Restaurant Association.
Pickle Packers International, Inc.
Processed Apples Institute.
Retail Bakers of America.
Retail Confectioners Institute International.

Mr. VANIK. Well, speaking as a consumer, I would like to ask either of you gentlemen, whether I—and I consume very little sugar, less than an average person—when can I look forward to an appropriate price reduction?

Mr. KOMINUS. Mr. Chairman, the price——

Mr. VANIK. It would cost the Treasury about $30 million, but it would help lower sugar prices by about $150 million. It has a high benefit-cost ratio, but I would like to know whether this is really the fact when it comes down to the general consumer.

Mr. KOMINUS. Mr. Chairman, the price of refined sugar is directly related to the price of raw sugar.

Mr. VANIK. Yes.

Mr. KOMINUS. And any reduction in the price of raw sugar will be accompanied by a comparable reduction in the price of refined sugar.

Mr. VANIK. Do you know of any other area where Government tariff actions are likely to have as beneficial a consumer result?

Mr. KOMINUS. Offhand, I cannot think of another.

Mr. VANIK. It is anticipated that this will be passed on to the consumer. Well, thank you very much. I appreciate very much your testimony.

Mr. KOMINUS. Thank you.

Mr. VANIK. We will hear now from our colleague, Mr. Stangeland of Minnesota, with the Red River Valley Beet Producers. I suppose at the same time we could hear as part of that panel Mr. Carter from the Beet Sugar Association.

STATEMENT OF HON. ARLAN STANGELAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. STANGELAND. Thank you, Mr. Chairman.

Mr. VANIK. We are happy to hear from you. Your entire testimony will be included in the record.

Mr. STANGELAND. Fine. I do not have a prepared statement, Mr. Chairman, but I come before you representing the largest sugar beet growing congressional district in the United States, the seventh of

Minnesota, also the district from whence the Secretary of Agriculture comes, and a former colleague of yours, who understood sugar legislation and sugar concerns.

My sugar beet growers are concerned; they are concerned about the removal of this last vestige of some protection. I want to applaud you for your efforts and I had joined those efforts in trying to craft a good piece of legislation earlier on, which we lost.

I think our sugar growers deserve this kind of protection. I believe that the impact on the consumer is going to be very minute.

And while it is your legislation, nevertheless I encourage the subcommittee not to report it favorably.

And because Mr. Carter represents the same people that I am representing and has authority to speak for them and he understands the intricacies of the sugar market and sugar legislation, I would defer to him and let him use the time for testimony.

Thank you very much.

Mr. VANIK. Mr. Carter?

STATEMENT OF DAVID C. CARTER, PRESIDENT, U.S. BEET SUGAR ASSOCIATION

Mr. CARTER. Thank you, Mr. Stangeland.

Mr. VANIK. Your entire statement will be entered in the record without objection. You may excerpt from it.

[The prepared statement follows:]

STATEMENT OF DAVID C. CARTER, PRESIDENT, U.S. BEET SUGAR ASSOCIATION

Mr. Chairman and Members of the Committee: My name is David Carter. I am President of the United States Beet Sugar Association, a National Trade Organization comprised of beet sugar manufacturers. Association members process and distribute approximately 80 percent of all of the beet sugar marketed in the United States.

In addition to beet sugar processors, I am authorized to state that other segments of the domestic sugar industry—sugar cane farmers and first processors in Florida, Louisiana, Texas and Hawaii, and more than 14,000 sugar beet farmers who porduce the crop in fourteen states endorse this statement. A list of those organizations is attached as part of this testimony.

The domestic sugar industry opposes H.R. 6453, a proposal permitting the tariff on imported sugar to be reduced to virtually nothing.

Before I detail the specifics of our opposition let me just remind the Committee that the very first revenue raising Act of this nation, the Act of July 14, 1789, imposed a 3 cents per pound tariff on imported loaf sugar. Since then—except for a period between 1890–1894—there has always been a tariff on imported foreign sugar going as high as 18 cents per pound in 1812–1816. (Between 1890 and 1894, instead of duty on foreign sugar, the U.S. government paid a 2 cents per pound bounty for domestically produced sugar).

These facts perhaps suggest that the domestic sugar industry is a product of federal government tariff policies stretching over two hundred years, and indeed it is. The Sugar Act which served consumers and producers of this nation from 1934 to 1974, placed less reliance on tariffs than on a system of supply-management, but even that program continued the duty rate at a minimum 62.5 cents per hundred weight of raw sugar or 0.625 cents per pound.

During the last twelve months American sugar producers have seen a special import fee on sugar reduced from 3.36 cents per pound to zero cents.

During the last twelve months American sugar producers have seen the House defeat a carefully devised proposal which would have placed a modest floor under sugar prices in order to maintain a viable domestic production capability and thus assure consumers of a dependable supply at prices fair to consumers and producers alike.

During the last three months American sugar producers have seen congressional pressure force a reduction of the duty on sugar fom 2.81 cents per pound to its current level of 0.625 cents per pound.

And now the intent of H.R. 6453 is to strip away even this last vestige of a two hundred year old tariff on this basic commodity—which is both unwise and unnecessary.

Mr. Chairman, our initial response to this bill would well have been: Why bother to protest? Indeed, we have been encouraged by some to remain silent for fear of antagonizing so called "consumer spokespersons" since this tariff reduction is presumably aimed at helping the consumer.

Frankly, Mr. Chairman, the only real protection sugar consumers have in this country is the domestic sugar industry which this tariff is designed to foster.

Scondly, some of these same observers point to the fact that since world sugar doubled during 1979—going from 7.5 cents in January to 14.87 cents in December—that all must be well in the domestic sugar industry. They further suggest that since sugar prices have gone even higher in the first quarter of 1980, the tariff can be cut to virtually zero with no ill effect. It can, however, be strikingly misleading to measure the relative economic health of an industry. As members of this Committee well knows, only part of the domestic industry was able to survive the disasterously low price cycle of 1978–1979.

Rather than be content with the fact that raw sugar prices are substantially higher than last year at this time, we respectfully urge this Committee consider the benchmark for domestic sugar prices developed during the Sugar Act. It contained a price objective, adjusted monthly in accordance with a formula worked out by Congress and subscribed to by both producer and consumer interest. This formula involved the use of the Prices-Paid-By-Farmers Index and the old Wholesale Price Index. In brief, it took into consideration the fact that sugar producers were (as we still are) subject to the same inflationary pressures as the rest of the economy, but, since the price objective was adjusted in response to changes in other economic indicators, sugar would not lead in an inflationary spiral.

The average of the derived world spot price and the N.Y. #12 (domestic) spot price for sugar in 1979 was 15.53 cents per pound. The price objective, had the old Sugar Act still been in effect, would have averaged 17.89 cents for the year, or some 2.36 cents higher than the attained average. Yet, as I noted earlier, we saw the special import fee on sugar reduced to zero during the year, in response to rising sugar prices.

Last month, (the latest month for which data is available) the tariff was reduced from 2.81 cents to the current statutory minimum of 0.625 cents and the N.Y. #12 spot price averaged 19.37 cents. However, based on the old Sugar Act formula, which was deemed fair and reasonable by both producers and consumers, the price objective for March would have been 19.82 cents, some 0.45 cents higher than the attained average.

If this Committee could be assured that lowering the tariff to zero (for all intents and purposes) would result in a lowered price to consumers, that would be one thing. But I seriously doubt that removal of this modest tariff would be reflected in any price savings to the consumer and indeed would reduce the income of the Treasury by approximately 62.5 million dollars.

Certainly, another consideration in maintaining the tariff is the advantage which accrues to those nations which are granted preferential treatment under the Generalized System of Preferences called for by the Trade Act of 1974.

Domestic sugar producers have voiced some opposition to the application of the GSP when the tariff reached the upper statutory limit of 2.81 cents because of the disruption that amount of money per pound of sugar has on the market place. The Congress, however, has determined that this nation has a certain responsibility to aid our less developed trading partners and it is not our intention to fault that decision.

However, in light of the impact that H.R. 6453 has on these less developed nations a review is in order.

Since 1974, some thirty-one sugar-exporting nations have qualified for GSP treatment for sugar sent to the United States. Over the years GSP duty-free shipments have ranged from 11.5 percent to more than 17 percent of total annual imports.

In 1979, for example, some nineteen under-developed and less developed countries exported 822,810 tons of raw sugar to the United States—17.12 percent of our total sugar imports last year, according to U.S. Customs data. These shipments had a combined customs value of slightly over 189 million dollars. Assuming the

full 2.8125 cents per pound duty waiver (based on an average purity of 86 degrees) accrued to the exporting countries, they benefitted by some 46,283,062 dollars during the twelve month period.

During the first two months of 1980, 95,702 tons of duty-free sugar entered the United States, valued at 31,807,768 dollars. These seven exporting countries—Belize, Bolivia, Maritius, Swaziland, Honduras and Mozambique—gained 5,383,235 dollars in tariff concessions.

The trade advantage of the GSP, deemed appropriate by the Congress in 1974, will of course be erased insofar as sugar is concerned by approval of H.R. 6453.

There are other reasons for opposing this legislation, Mr. Chairman, not the least of which is perhaps it's time the so called "consumer activists" stop kicking the Domestic Sugar Industry around in the name of consumerism. Since the demise of the Sugar Act the Domestic Sugar Industry has suffiered severe financial setbacks caused primarily by the instability of the world sugar market which yo yo's the domestic producer first and the consumer next. One month prices go up, the next they're down. The lack of a clear national sugar policy is not in the public interest. Cheapest is not always in the consumer best interest, particularly if cheap imports spell the end of a domestic industry. It is therefore time for those who have annointed themselves as consumer spokesmen to understand just one facet of what would happen to the consumer if the domestic sugar industry went out of business tomorrow.

First, there would be little or no sugar immediately available to the Western half of this nation since East coast refiners do not have the capacity to supply those regions. Second, the food processors in the West who produce a large percentage of this country's canned and frozen foods (most of which require sugar) would scramble for what scarce supplies were available thereby driving the price of sugar sky high and the cost of other foods along with it.

There quite possibly would be no sugar available in retail stores.

Mr. Chairman, we believe H.R. 6453 is bad legislation. It removes a little bit of psychological as well as financial support for a strategically important United States industry; it cuts off a source of revenue to the United States Treasury; and finally it is a counter productive step carried on in the name of helping consumers but which in reality will hurt the consumer.

Thank you.

EXHIBIT A

ORGANIZATIONS SUBSCRIBING TO STATEMENT OF DAVID C. CARTER BEFORE TRADE SUBCOMMITTEE OF WAYS AND MEANS COMMITTEE

U.S. Beet Sugar Association, 1156 Fifteenth Street NW., Suite 1019, Washington, D.C.

American Sugarbeet Growers Association, 1776 K Street NW., Suite 900, Washington, D.C.

The Florida Sugar Cane League, 918 Sixteenth Street NW., Washington, D.C.

American Sugarcane League, 232 East Capitol Street NE., Washington, D.C.

Hawaiian Sugar Planters Association, 1511 K Street NW., Suite 723, Washington, D.C.

Farmers and Manufacturers Beet Sugar Association, 5218 Black Road, Waterville, Ohio.

Big Horn Basin Beet Growers Association, Star Route, Box 294A, Powell, Wyo.

Elwyhee Beet Growers Association, P.O. Box 742, Mountain Home, Idaho.

Goshen County Cooperative Beet Growers Association, Veteran, Wyo.

Idaho Beet Growers Association, Route 2, Box 38, Paul, Idaho.

Montana-Dakota Beet Growers Association, Box 443, Fairview, Mont.

Mountain States Beet Growers Association of Montana, Route 1, Laurell Frontage Road, Billings, Mont.

Nebraska Beet Growers Association, 637 Valley View Drive, Scottsbluff, Nebr.

NYSSA-Nampa Beet Growers Association, Route 1, Marsing, Idaho.

Rio Grande Valley Sugar Growers, P.O. Drawer A, Santa Rosa, Tex.

Mr. CARTER. Thank you. I will summarize my statement. My name is David Carter. I am president of the U.S. Beet Sugar Association, a national trade organization comprised of beet sugar manufacturers.

In addition to the beet sugar processors, other segments of the domestic sugar industry, including sugarcane farmers and first proces-

sors in Florida, in Louisiana, in Texas, and in Hawaii, and more than 14,000 sugar beet farmers who produce the crop in 14 States endorse this statement.

A list of those organizations is attached.

Mr. Chairman, the domestic sugar industry opposes H.R. 6453. I wish to remind the committee that the very first revenue-raising act of this Nation, an act of July 14, 1789, imposed a 3-cent-per-pound tariff on imported loaf sugar. There has always been a tariff on imported foreign sugar, going as high as 18 cents a pound.

These facts perhaps suggest that the domestic sugar industry is a product of Federal Government tariff policy stretching over 200 years, and indeed it is to a substantial degree. The Sugar Act that served producers and consumers in this Nation from 1934 to 1974 placed less reliance on tariffs than on a system of supply and management.

But even that program continued the duty rate at a minimum of 62.5 cents for a hundredweight of raw sugar. During the last 12 months American sugar producers have seen a special import fee on sugar reduced from 3.36 cents per pound to zero. During the last 12 months, American sugar producers have seen the House defeat a proposal which would have placed a modest floor on sugar prices in order to maintain a viable domestic production capability.

During the last 3 months, American sugar producers have seen congressional pressure force a reduction of the duty on sugar from 2.81 cents per pound to its current level of 0.625 cents.

And now the intent of H.R. 6453 is to strip away even that last vestige of a 200-year-old tariff on this basic commodity which we determine is both unwise and unnecessary. Our initial response to this bill could well have been: Why bother to protest? Indeed, we have been encouraged by some to remain silent for fear of antagonizing the so-called consumer spokespersons since this tariff reduction is presumably aimed at helping the consumer.

Frankly, Mr. Chairman, the only real protection sugar consumers have in this country is the domestic sugar industry which this tariff is designed to foster.

Some point to the fact that since world sugar prices doubled during 1979, going from 7.5 cents last January to 14 or 15 cents, rather, in December that all must be well in the domestic sugar industry. They further suggest that since sugar prices have gone even higher in the first quarter of 1980, the tariff can be cut to virtually zero with little effect. It is, however, very misleading to measure the relative economic health of an industry. As members of this committee well know, only part of the domestic sugar industry was able to survive the disastrously low price cycle in 1978 to 1979.

We, therefore, respectfully urge that the committee consider some kind of benchmark for domestic sugar prices; such a benchmark was developed during the Sugar Act. It contained a price objective, adjusted monthly in accordance with a formula worked out by Congress. It was subscribed to by both producers and consumers.

The average of the derived world spot price and the New York No. 12 spot price for sugar in 1979 was 15.53 cents per pound. The price objective, had the old Sugar Act still been in effect would have averaged 17.89 cents for the year, some 2.36 cents higher than the attained

average. Yet, we saw the special import fee on sugar reduced to zero during the year in response to rising sugar prices.

Last month the tariff was reduced from 2.81 cents to the current statutory minimum and the New York No. 12 spot price averaged 19.37 cents, which was some 0.45 cent lower than the price objective had the old Sugar Act been in effect.

If this committee could be assured that lowering the tariff to near zero would result in a commensurate lower price to consumers, that would be one thing. But I find that I am on the opposite side of the picture from the response you got before.

I seriously doubt that the removal of this tariff would be reflected in any price savings to the consumers. It would, however, reduce the income of the U.S. Treasury by approximately $62.5 million, not $30 million, Mr. Chairman.

Mr. VANIK. Could you explain your difference?

Mr. CARTER. Yes, sir, I shall. It is the 5 million tons of imports at 62.5 cents per hundredweight.

Mr. VANIK. That is because GSP has been extended.

Mr. CARTER. At 62.5 cents per hundredweight.

Mr. VANIK. That reflects the GSP extension rather than the tariff change.

Mr. CARTER. Well, I will document those numbers.

Certainly, another consideration in maintaining the tariff is the advantage which accrues to those nations which are granted preferential treatment under the generalized system of preferences called for by the Trade Act of 1974.

Since 1974 some 31 sugar-exporting countries have qualified for that treatment, and in 1979 19 of our less developed trading partners exported 822,000 tons, which was 17 percent of our total imports. And assuming that the full duty was waived, about $46 million accrued to those GSP countries during the 12-month period.

And during the first 2 months of this year, about 96,000 tons of duty-free sugar entered the United States and about $5.3 million accrued in tariff concessions to those countries. The trade advantage of GSP was deemed appropriate by Congress in 1974, and of course it is going to be erased by the adoption of this bill.

There are other reasons for opposing this legislation. Since the demise of the Sugar Act, the domestic sugar industry has suffered severe financial setbacks caused by instability of the world sugar market.

Mr. VANIK. How are you doing right now?

Mr. CARTER. Right now we are operating at about——

Mr. VANIK. What kind of return is your industry getting?

Mr. CARTER. I doubt that financial data are yet available for the first quarter. Of course the price was up.

Mr. VANIK. They are pretty good; the return is pretty good.

Mr. CARTER. Well, you can say that, but even on the basis that prices are double what they were last year, we are operating with only about three-fourths of the industry left, so it is all kind of relative.

The last man out is going to turn out the light, I guess. Every time the price goes down, we lose a few more people. We may be doing well this week, but next week is coming.

Mr. VANIK. Is it as high as a 50-percent return?

Mr. CARTER. I do not believe it is that high.

One evidence could possibly be the amount of sugar that is still under loan with the U.S. Government from the 1979 crop. And I cannot respond to what the return is because I do not know what goes on in the marketplace. We all read in the papers that the price is double what it was last year. Keep in mind, however, that cane refiners can make the same return on 2-cent imported new sugar as they make on 40-cent sugar.

They just add their refiner's margin to the cost. We have to pay our farmers and operate our factories, so we are still paying off the indebtedness that we accrued when we were trying to sell against the 7.5-cent imported sugar.

I think one of the facets that ought to be considered by this committee is what would happen to the sugar consumers of the United States if tomorrow the domestic industry went out of business. In the first place, there would not be any sugar available in the western part of the United States because the east coast refiners simply cannot supply that area; they do not have the capacity to supply that.

If we were out of business, those food processors out west who use sugar in products such as canned and frozen foods would be scrambling around trying to buy sugar that is only available from east coast refiners, raising the price of that sugar. There might come a time when there would not be any sugar available on the grocery shelves because the food processors would have gotten it all.

But I simply believe that this is bad legislation. It removes a little bit of the psychological as well as financial support for a strategically important U.S. industry. It cuts off a source of revenue for the U.S. Treasury. It takes away an advantage for our less developed trading partners. And finally, I believe it is counterproductive in the name of the consumers who you are trying to help.

If our industry goes out of business, why, the consumer is the one that is really going to suffer.

Thank you very much, Mr. Chairman.

Mr. VANIK. The bill merely authorizes as opposed to ordering the President to impose the lower limit; and it retains his present authority to impose the maximum $2.81 duty when the world price is lower. So I cannot understand why——

Mr. CARTER. I understand that too. But it seems to me——

Mr. VANIK. You know, the present administration is not going to put more in loan than they have to, and they are going to have——

Mr. CARTER. By the same token——

Mr. VANIK. I presume.

Mr. CARTER [continuing]. A large hue and cry would arise from the consumers that you are going to cost them another $200 million by putting the 2-cent tariff back on.

Mr. VANIK. On this whole sugar issue, I have tried to be objective. You know, I try to balance my position between the producers and the consumers at great risk—go to great lengths to explain this. I thought I was recommending something here that would not upset production and which gave validity to what we are trying to do to arrive at a treatment of sugar that would be balanced and would look out for both sectors.

And I know middle positions are sometimes attacked by everybody. But I think our legislative experience gives a credibility to this kind of action. The days when we looked after the producers out there, you know, I do not think we fared very well with the legislative effort.

So this whole process is a little bit of a give and a little bit of a take, and I thought I was proposing something that was reasonable and would not be so vigorously opposed.

Mr. CARTER. Well, I think sugar is a real emotional issue; for what reason, I do not really know. There are crops produced in much greater volume in this country, but I——

Mr. VANIK. I would like to have sugar legislation get low key, you know. I remember over the years I would make plans for the adjournment of a session, and we would spend Christmas Eve here year after year arguing about this legislation.

Congress does not want any more of that. We want to deal with it in a more calm and less pressured way. And that is why I suggest to all sectors here that we try to give sugar less prominence in the legislative process. And I thought this was a step in that direction which would provide credibility for a balanced program.

It was very difficult for me to go back home and face the assault as I did in my efforts to deal with the bill that Congress was trying to discuss before. I must say that among the troubled industries of America, when I look at them, when I rate the troubled industries of America on a 1 to 10 scale, you are not a troubled industry at this point.

And we have such a wide spectrum of problems that I do not see the sugar situation as one that is among that list of very, very troubled industries at this moment.

We are going to have automobile workers getting no compensation payments in the next few weeks. We are going to have more plants closing. We are going to have the steel plants close down.

Mr. STANGELAND. If I may, Mr. Chairman, just briefly, and in all due respect, we as Congressmen should go out into the central part of the United States where the agricultural production is, and see the story for ourselves. I, of course, live there and never in my knowledge of history and time have I ever seen those normally optimistic farmers so depressed because of the high interest.

Mr. VANIK. There is almost an instinctive feeling of concern here, and yet our economists cannot seem to appreciate it. These people are better in their economic evaluation. I go back home and everybody heads toward the storm shelter. They are getting prepared for the difficult years ahead. There will probably be a shortage of sugar too.

Mr. STANGELAND Any indicator such as this is interpreted as Congress being against agriculture. But, thank you very much, Mr. Chairman.

Mr. VANIK. Mr. Frenzel, do you want to make any comment on the sugar issue?

Mr. FRENZEL. I must comment on my colleague's testimony; it must have been magnificent. [Laughter.]

Mr. STANGELAND. No, it was not. [Laughter.]

Mr. FRENZEL. If you would not mind refreshing my memory: As I understand the problem, you are not nervous if the prices stay high; but if they are reduced, there is a real threat?

Mr. STANGELAND. There is a concern that we may get into a situation where we overproduce and prices go down. There is also a concern that the removal of this tariff puts pressure on the administration to eliminate this last bit of protection that the sugar growers have, and that this would not have an impact on the price to the consumer; plus the fact that I would just remind the chairman of the critical situation we have in agriculture throughout the country, the cost of money, the cost of fuel, the low farm prices. These are indicators out of Washington that farmers are not being considered or looked at in a very good light.

Mr. FRENZEL. What is the price of sugar today? Do you have any idea?

Mr. STANGELAND. I would yield to Mr. Carter.

Mr. CARTER. I think it is around 19 or 20 cents, raw value on the New York market.

Mr. FRENZEL. And that is down considerably from February?

Mr. CARTER. Actually, it is up. I mean it had gone up—I think, in December or early January to about 27 cents and then dropped back down. It is going up and down the limit every day. It is a real speculator's market right now, without any real change in the supply-demand picture.

It requires less of an investment to make a profit on a sugar futures contract than it is on a silver contract or a gold contract, so you really do have speculators in the market.

Mr. FRENZEL. Well, what happens when the price goes down? Is the Agriculture Department then stuck with a large liability?

Mr. STANGELAND. It depends on what program they implement, whether or not it is a loan program or a storage program, and there is sugar in storage right now in the hands of the Government. That is one way they can shore up the price.

But in the last downswing, the action was not adequate to protect that farmer, and our farmers out there in our sugar beet growing area own the processing plant. They had to buy out American Crystal, and it is a co-op. It is the largest co-op processing plant of sugar in the United States.

And so they bear it on both ends, as a processor and as a grower.

Mr. FRENZEL. Thank you very much.

Mr. VANIK. We appreciate your testimony.

Mr. CARTER. Thank you.

Mr. VANIK. The next bill will be the customs court bill.

Mr. Babb, we will hear your testimony on H.R. 6394. Your entire statement will be admitted into the record. Feel free to excerpt from it.

STATEMENT OF BERNARD J. BABB, ON BEHALF OF FREEMAN, MEADE, WASSERMAN, & SCHNEIDER, NEW YORK, N.Y.

Mr. BABB. Thank you very much, Mr. Chairman. My name is Bernard J. Babb. I am a member of the bar of the State of New York and a partner in the law firm of Freeman, Meade, Wasserman & Schneider. Prior to joining Freeman, Meade, Wasserman & Schneider, I spent 14 years as an attorney with the Customs Section of the Department of Justice's Civil Division. During my last 6 years with the Government, I served as assistant chief of the Customs Section.

I have practiced before the U.S. Customs Court for 18 years, and I am intimately familiar with the jurisprudence and procedures of that court.

My firm supports the concept embodied in the proposed legislation which the committee is considering.

There are, however, two aspects of the proposed legislation which we believe should be corrected.

First, section 201 of the proposed bill would permit the Court of International Trade to render judgment on a counterclaim asserted by the United States. This proposed provision would permit the court to increase the rate of duty determined by the Customs Service. We believe that such an in terrorem provision should not be adopted. For the reasons which I will explain, the provision is unnecessary and will complicate the adjudication of issues which are important to commercial activities. To understand our position, it is necessary to review briefly the state of the current law.

At the present time, the law permits the Government to mandate the rate, value and duties due when merchandise is imported. To reach its conclusion, the Customs Service may require an importer to submit samples, descriptive and promotional literature, financial data and all related evidence.

The Customs Service may examine an importer under oath. Detailed audit by the Customs Service are routine. The Customs Service's agents regularly conduct intensive investigations abroad. The Customs Service's field offices regularly seek internal advice from its headquarters and can generally seek the assistance of all other agencies of the U.S. Government.

In the event the importer is dissatisfied with a final administrative decision, as evidenced by a liquidation, he may file a protest against such a liquidation. This action gives the Customs Service the right to reconsider the entire issue and under certain circumstances to increase the duties originally assessed. In the event the Customs Service adheres to its initial decision and denies the protest, the importer may elect to commence an action in the Customs Court.

Of course, if the importer is satisfied, no protest is filed, and the assessment of duties becomes final—against all parties, including the United States—after the expiration of certain statutory time periods.

In short, the Customs Service has ample and repeated opportunity to review all issues of classification and value and to obtain all documents or other evidentiary material which it may need to reach a decision.

Nonetheless, section 201 of the proposed legislation would permit the Government again to reopen all matters which it had previously considered. It would create intolerable delay in the discovery process and would make the Customs Service's final determination, as reflected in the liquidation, uncertain at any point in the judicial process.

There is simply no reason to permit the Government to reconsider its previous decision after numerous opportunities to arrive at its final position, especially in light of the fact that the court is a "businessman's tribunal" and the Government's position is buttressed by a presumption of correctness.

Because of the nature of international trade, customs duties are paid "up front" and merchandise long sold before a matter is resolved in the courts. To introduce the in terrorem possibility of a Government counterclaim would create commercial difficulties and uncertainties inconsistent with the court's misssion. Such a provision would greatly delay and complicate the judicial review of administrative determinations.

Nor would the deletion of the proposed section 201 have an adverse impact on American competitors or on competition in the U.S. market. Section 516 of the Tariff Act provides a scheme which permits an American producer to petition the Secretary of the Treasury for a change in the classification or value of imported competitive articles. In the event the Secretary of the Treasury denies the petition, the American producer has the right to litigate the question, in an expedited manner, in the Court.

In short, because of the uncertainty which will be created in the decisionmaking process and the ensuing delay in the judicial process, section 201 should be deleted.

Second, proposed section 301 appears to contain an inadvertent omisssion. Specifically, proposed section 2637(a) of title 28 would provide that a civil action contesting the denial of a protest under section 515 of the Tariff Act may be commenced only if the liquidated duties, charges or exactions have been paid at the time the action was commenced—except in an action involving a surety's obligation to pay such charges.

However, section 514(a)(4) of the Tariff Act provides that an importer may file a protest against the Customs decision to exclude merchandise from entry or delivery under any provision of the customs laws. Thus, the decision to exclude merchandise from entry or delivery is subject to judicial review.

At present, both section 1582 and proposed section 1581(a)(4) authorize a commencement of an action before the Customs Court to contest the denial of a protest which challenges the exclusion of merchandise from entry or delivery.

Since, in such a case, no liquidated duties, charges or exaction will accrue, the statute should make it clear that an action which challenges the exclusion of imported merchandise is exempted from the requirements of the proposed section 2637(a).

Thank you for the opportunity to appear, and I will attempt to answer any questions which you might have.

Mr. FRENZEL. Mr. Babb, with the exception of the two points which you feel ought to be changed, are you supportive of this bill?

Mr. BABB. Quite so, quite so, Mr. Frenzel, yes. We support the bill. We think it is a good bill. It comes at a time when trade matters are booming. It clarifies jurisdiction, clarifies tribunal in which relief can be sought.

Mr. FRENZEL. There is some question about whether it does, in fact, clarify jurisdiction. The court would seem to have a rather broad jurisdiction.

Mr. BABB. To the extent that jurisdiction—the jurisdiction of trade matters and customs matters are spread out all over the place in other forms than the Customs Court.

I think this bill does evidence an attempt to place it in one place, and I think the logical place.

Mr. FRENZEL. Thank you very much for your testimony, Mr. Babb.

Mr. BABB. Thank you.

Mr. FRENZEL. The subcommittee will now hear testimony on H.R. 5147. Is Mr. John M. Snyder present?

Mr. SNYDER. Right here.

Mr. FRENZEL. Thank you. Do you have a prepared statement?

Mr. SNYDER. Yes, I do. I have submitted copies ahead of time.

Mr. FRENZEL. That will be made a part of the record and you may proceed in any way that you want on this issue.

STATEMENT OF JOHN M. SNYDER, ON BEHALF OF THE CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS

Mr. SNYDER. Thank you, Mr. Chairman. I will summarize where I am able to and read the rest of it.

The Citizens Committee for the Right to Keep and Bear Arms favors legislation which would repeal the Gun Control Act of 1968 or which would weaken it. Especially in the latter category is H.R. 5225 sponsored by Congressman Volkmer of Missouri and now over 100 members of the House of Representatives.

Since we support this type of legislation, we necessarily oppose the current bill because we believe it would, in effect, strengthen the Gun Control Act of 1968.

As testimony made evident last year during public oversight hearings on the Bureau of Alcohol, Tobacco, and Firearms of the U.S. Treasury Department, and as it's currently being made further evident this afternoon during hearings before that same subcommittee, that is the Senate Appropriations Subcommittee on Treasury, Postal Service, and Government Operations, the Gun Control Act of 1968 has been an instrument for the creation and maintenance of a Government bureaucracy inimical to the civil rights of law-abiding American firearms dealers and owners.

Promoters of the Gun Control Act of 1968 hailed it as an effective crime prevention measure. The fact that violent crime rates have increased since its effective date belie that justification. Its continued administration cannot be justified.

The public interest and the taxpayers' interest would be served better not by strengthening it but by weakening it or, better yet, by repealing it.

While the specific provisions of H.R. 5147 would prevent a decrease in the tariff on certain imported handgun parts under the Trade Agreement Act of 1979, they, in effect, would constitute a strengthening of the Gun Control Act of 1968 because they would impose upon law-abiding American gun owners greater difficulty in obtaining

handguns than they now can anticipate under the combined operation of the 1968 act and the 1979 act.

This would constitute further, unnecessary interference with consumers' ability to choose among the items they wish to purchase and would amount, therefore, to a restraint of trade.

To restrict this interference to so-called nonsporting handguns just adds insult to injury, as it implies a denial of the right to arms for self-defense.

Thank you.

Mr. FRENZEL. Thank you very much. The next witness is Mr. Neil Knox.

Ms. METAKSA. Mr. Chairman, my name is Tanya Metaksa. I am the deputy executive director and I will be testifying on behalf of Mr. Knox, who had another hearing to attend.

With me is Kathryn Cole-Royce, our Federal liaison. I have submitted for the record the testimony for Mr. Knox, and I would like to summarize from it, if that would be all right.

Mr. RUSSO. Without objection, it is so orderd.

STATEMENT OF TANYA K. METAKSA, REPRESENTING NEAL KNOX, ON BEHALF OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA, INSTITUTE FOR LEGISLATIVE ACTION

Ms. METAKSA. Mr. Chairman and members of the subcommittee, is my pleasure to come before you today to express the views of the National Rifle Association concerning H.R. 5147. This bill would disallow the phased reduction of tariffs for pistol and revolver parts for guns "generally recognized as not particularly suitable for, or readily adaptable to, sporting purposes." The NRA opposes this bill on both philosophical and practical grounds.

First and foremost, we object to the underlying assumption that certain types of firearms are inherently evil. The meaningless term "Saturday night special" has been used to refer to those handguns which are called not particularly suitable for sporting purposes, a phrase which is itself indefinable.

This definitional problem is perpetuated in H.R. 5147. How is the Government to determine whether a firing pin is intended to be used in a 2-inch or 6-inch barrel gun?

Considering that Congress found it absolutely necessary in 1968 to define in statute such simple terms as "rifle, pistol," and "revolver," I find it extremely hard to believe that any agency could find a "generally recognized" definition of any concept as complex as the one we are dealing with.

This is the language which appears in section 925(d) of the Gun Control Act. After wrestling with the problem of defining that phrase and being unable to define it, the Congress merely passed the law, then left it up to the bureaucratic agencies—specifically the Bureau of Alcohol, Tobacco, and Firearms—to write a definition.

Although the BATF adopted a list of point system criteria to determine what handguns were importable, it was not submitted as a regulation because the standards were so arbitrary. The criteria are merely internal standards used by BATF. And BATF cannot even be held to its own criteria.

A statement at the top of form 4590, "the point system form," maintains that the Bureau "reserves the right to preclude importation of any revolver or pistol which achieves an apparent qualifying score, but does not adhere to the provisions of section 925(d)(3)." This is, of course, the subsection containing the sporting purposes determination.

The point system includes those features which are incidental to the operation of the gun, about equivalent to such features as additional chrome, square versus round headlights, or "racing stripes" on automobiles.

As ridiculous as the point system is when applied to its completed guns, it cannot work in relationship to gun parts. It is simply impossible in many cases to determine by looking at one part whether or not the finished product would pass or fail the arbitrary standards.

Many firearms which pass the criteria have interchangeable parts with other firearms which fail. I believe it would be helpful to the committee to have an exploded view of a revolver which passed the "point system" by increasing the gun's weight by 2 ounces and by adding adjustable target sights. With the exception of these two parts, all other parts are the same.

The current factoring criteria are neither law nor regulation. They are simply internal guidelines used within the Treasury Department. They could be changed at a moment's notice, without even appearing in the Federal Register, and with no congressional or public recourse.

Furthermore, of potentially greater concern to this subcommittee is the fact that the present prohibition on the importation of certain firearms is in conflict with section 4 of article III of part II of the General Agreement on Trades and Tariffs dated 1969 in Geneva.

This section states in part, that:

> The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

The present section of the Gun Control Act of 1968 which prohibits importation of guns which do not pass the arbitrary "sporting purposes" test is a clear violation of the GATT agreement. So is the provision of law which prohibits importation of surplus military firearms. As the committee may be aware, many of the firearms models currently made and sold in the United States are identical to models which cannot be imported.

In the opinion of the National Rifle Association, the sole effect of those import provisions is to provide unwarranted protections for U.S. arms manufacturers, to the detriment of our members. By law our members are denied the opportunity to buy certain imported products essentially identical, but which may be equal or higher in quality, yet lower in price, than currently made products from U.S. manufacturers.

We ask that the committee reject H.R. 5147 as an unworkable bill based on the mythical premise that some firearms are inherently evil. We further ask that the committee address the fact that the 1968 Gun Control Act and the Bureau of Alcohol, Tobacco, and Firearms ar-

bitrary standards have placed the United States in violation of international treaty agreements.

On behalf of the 1,750,000 members of the National Rifle Association, I thank the subcommittee for our being given the opportunity to express our views.

[The prepared statement follows:]

STATEMENT OF NEAL KNOX, EXECUTIVE DIRECTOR, NATIONAL RIFLE ASSOCIATION OF AMERICA

Mr. Chairman and Members of the Subcommittee, it is my pleasure to come before you today to express the views of the National Rifle Association concerning H.R. 5147. This bill would divide item 730.61 of the U.S. Tariff Schedules, which is currently handgun parts, into two new items, 730.60 and 730.62. The effect would be to disallow the phased reduction of tariffs under the new Multilateral Trade Negotiations for pistol and revolver parts used in guns "generally recognized as not particularly suitable for, or readily adaptable to, sporting purposes." The NRA opposes this bill on both philosophical and practical grounds.

It has frequently been stated that a large loophole was left in the 1968 Gun Control Act because that act prohibited the importation of handguns "not particularly suitable for sporting purposes," but did not prohibit the importation of parts of such firearms. The bill before you seeks to correct that so-called "loophole."

First and foremost, we object to the underlying assumption that certain types of firearms are inherently evil. The meaningless term "Saturday Night Special" has been used to refer to those handguns which are called "not particularly suitable for sporting purposes," a phrase which is itself indefinable. It has been said that these are "small, cheap handguns," but the various legislative attempts to define so-called Saturday Night Specials include many handguns which are neither small nor cheap. And neither size nor price necessarily determine whether a gun is suitable for use in sport. Further, to attempt the impossible—to attempt to define a gun which may be used in sports only—ignores the legitimate and lawful use of handguns for self-defense, a purpose which is specifically mentioned in the Gun Control Act as a use of firearms which the framers of the law did not intend to infringe.

In a 1977 study by the Police Foundation—an organization which incidentally favors prohibitive firearms laws—researchers found that criminals tend to prefer more expensive, high quality handguns. This supports our oft-repeated contention that the cause of violent crime is the motivation of the criminal, not the physical characteristics of the tools he may use.

Because many crimes—although by no means all crimes—are committed with firearms which are concealed prior to the offense, some have advocated prohibitive laws on "concealable handguns." But the Supreme Court has held that any firearms less than 21 overall inches is concealable. And I'm sure that the Committee must be aware that almost any firearm—rifle, shotgun or handgun—can be made much smaller than 21 inches long by a few minutes with a hacksaw. It is, and has been since 1935, a Federal offense to cut rifles and shotguns below a certain barrel length. The criminals do it anyway—just as they have, and will, saw off handgun barrels to whatever lengthy they desire, regardless of what Congress may stipulate as a minimum acceptable length.

This definitional problem is perpetuated in H.R. 5147. How is the government to determine which pistols and revolvers would have their parts considered under the proposed new item 730.60 because the pistol or revolvers are (quote) "generally recognized as not particularly suitable for, or readily adaptable to, sporting purposes"?

"Particularly suitable"—does this phrase mean that the gun in question must be uniquely unsuitable for other, non-sporting purposes? This is much stronger language than just requiring that it be suitable for sport. Isn't this a subjective and arbitrary determination to be made by the enforcing authorities? How about "readily adaptable?" How ready is ready—an hour's gunsmithing? A week at the shop? A moment to switch to competitive style target grips? And what are "sporting purposes?" Target shooting? All target shooting including law enforcement or self-defense oriented target shooting styles? Hunting? All hunting, even subsistence hunting done purely for food and not for sport?

Considering that Congress found it absolutely necessary in 1968 to define in statute such simple terms as "rifle", "pistol" and "revolver", I find it extremely hard to believe that any agency could find a "generally recognized" definition of any concept as complex as we are dealing with here.

This is the language which appears in Section 925(d) of the Gun Control Act. After wrestling with the problem of defining that phrase and being unable to definite it, the Congress merely passed the law, then left it up to the bureaucratic agencies—specifically the Bureau of Alcohol, Tobacco and Firearms—to write a definition.

Although the BATF adopted a list of point system criteria to determine what handguns were importable, it was not submitted as a regulation because the standards were so arbitrary. The criteria are merely internal standards used by BATF. And BATF cannot even be held to its own criteria. A statement at the top of form 4590, "the point system form," maintains that the Bureau "reserves the right to preclude importation of any revolver or pistol which achieves an apparent qualifying score but does not adhere to the provisions of section 925(d)(3)." This is, of course, the subsection containing the sporting purposes determination.

A firearm may pass or fail for lack of such incidental features as target grips, and the type of target sight. I have attached a copy of the BATF factoring criteria form for the Committee's information.

A check of the records will show that these criteria were developed between BATF and certain large importers with the specific intent of allowing the importation of certain guns, and disallowing the importation of others. For that reason, the point system includes those features which are incidental to the operation of the gun, about equivalent to such features as additional chrome, square versus round headlights, or "racing stripes" on automobiles.

Establishing any test based upon sporting purposes is an insult to those law-abiding citizens who own or want to own handguns for self defense, the legitimacy of which was supposedly protected in the preamble to the Gun Control Act of 1968. Even if one accepts the philosophical basis of sporting purposes criteria, they will not work in relationship to parts. It is simply impossible in many cases to determine by looking at one part whether or not the finished product would pass or fail the arbitrary standards. Several firearms which pass the criteria have interchangeable parts with other firearms which fail. Determining which parts would pass or fail would be in many cases impossible. Many pins, springs, screws, plungers and the like are common not only to factorable and unfactorable pistols and revolvers but to rifles and shotguns, and in fact, may be used in items which are not firearms.

Technically, a sixteenth of an inch difference in height or length, or a one-half ounce difference in weight can make a handgun importable or unimportable. Consider the examples of the Rossi Pioneer, that company's pre-1968 Gun Control Act 3-inch barreled .38 caliber revolver, and the Rossi Champion II, the post-1968 version of the same firearm. By increasing the gun's weight by two ounces and by adding adjustable target sights, the manufacturers were able to increase the factoring criteria score of the firearm by seven points to a passing grade of 46. With the exception of these two parts, all other parts are the same. How would Customs charge duty on repair parts which are interchangeable between the two models?

A similar case exists with the STAR model FR pistol and its post-1968 counterpart the model FM. By the addition of 5 ounces of weight and changing the type of sight adjustment, the manufacturers were able to add ten points, giving the pistol a passing score of 75 points. All other parts are identical. Would Customs assess the tariff at the higher or lower rate? Would a firing pin capable of being used in repairing either model be considered under item 730.60 or item 730.62? What would be the additional manpower costs to the Commerce Department of separately rating each imported part at either the higher or lower rate? Would the increased administrative costs offset whatever increase in tariff revenue H.R. 5147 might generate?

To ask the basic question: How would a customs agent determine whether identical firing pins would be used in 2-inch or 6-inch barrel guns?

The current factoring criteria are neither law nor regulation. They are simply internal guidelines used within the Treasury Department. They could be changed at a moment's notice, without even having to appear in the Federal Register, and with no Congressional or public recourse.

Furthermore, of potentially greater concern to this Subcommittee is the fact that the present prohibition on the importation of certain firearms is in conflict with section 4 of Articles III of Part II of the General Agreement on Trades and Tariffs dated 1969 in Geneva. This section states in part, that "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

The present section of the Gun Control Act of 1968 which prohibits importation of guns which do not pass the arbitrary "sporting purposes" test is a clear violation of the GATT agreement. So is the provision of law which prohibits importation of surplus military firearms. As the Committee may be aware, many of the firearms models currently made and sold in the U.S. are identical to models which cannot be imported.

In the opinion of the National Rifle Association, the sole effect of those import provisions is to provide unwarranted protections for U.S. arms manufacturers, to the detriment of our members. By law our members are denied the opportunity to buy certain imported products essentially identical, but which may be equal or higher in quality, yet lower in price, than currently made products from U.S. manufacturers.

We ask that the Committee reject H.R. 5147 as an unworkable bill based on the mythical premise that some firearms are inherently evil. We further ask that the Committee address the fact that the 1968 Gun Control Act and the Bureau of Alcohol, Tobacco and Firearms arbitrary support standards which have placed the U.S. in violation of international treaty agreements.

H.R. 5147 compounds the present problems. We urge that the Committee reject that bill and turn its attention to repealing the present sections of the 1968 Gun Control Act which create the problems.

On behalf of the 1,750,000 members of the National Rifle Association, I thank the Subcommittee for our being given the opportunity to express our views.

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FACTORING CRITERIA FOR WEAPONS

NOTE: The Bureau of Alcohol, Tobacco and Firearms reserves the right to preclude importation of any revolver or pistol which achieves an apparent qualifying score but does not adhere to the provisions of section 925(d)(3) of Amended Chapter 44, Title 18, U.S.C.

PISTOL

MODEL:

PREREQUISITES

1. The pistol must have a positive manually operated safety device.
2. The combined length and height must not be less than 10" with the height (right angle measurement to barrel without magazine or extension) being at least 4" and the length being at least 6".

INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL
OVERALL LENGTH		
FOR EACH ½" OVER 6"	1	
FRAME CONSTRUCTION		
INVESTMENT CAST OR FORGED STEEL	15	
INVESTMENT CAST OR FORGED HTS ALLOY	20	
WEAPON WEIGHT W/MAGAZINE *(Unloaded)*		
PER OUNCE	1	
CALIBER		
.22 SHORT AND .25 AUTO	0	
.22 LR AND 7.65mm TO .380 AUTO	3	
9mm PARABELLUM AND OVER	10	
SAFETY FEATURES		
LOCKED BREECH MECHANISM	5	
LOADED CHAMBER INDICATOR	5	
GRIP SAFETY	3	
MAGAZINE SAFETY	5	
FIRING PIN BLOCK OR LOCK	10	
MISCELLANEOUS EQUIPMENT		
EXTERNAL HAMMER	2	
DOUBLE ACTION	10	
DRIFT ADJUSTABLE TARGET SIGHT	5	
CLICK ADJUSTABLE TARGET SIGHT	10	
TARGET GRIPS	5	
TARGET TRIGGER	2	
SCORE ACHIEVED *(Qualifying score is 75 points)*		

REVOLVER

MODEL:

PREREQUISITES

1. Must pass safety test.
2. Must have overall frame (with conventional grips) length (not diagonal) of 4½" minimum.
3. Must have a barrel length of at least 3".

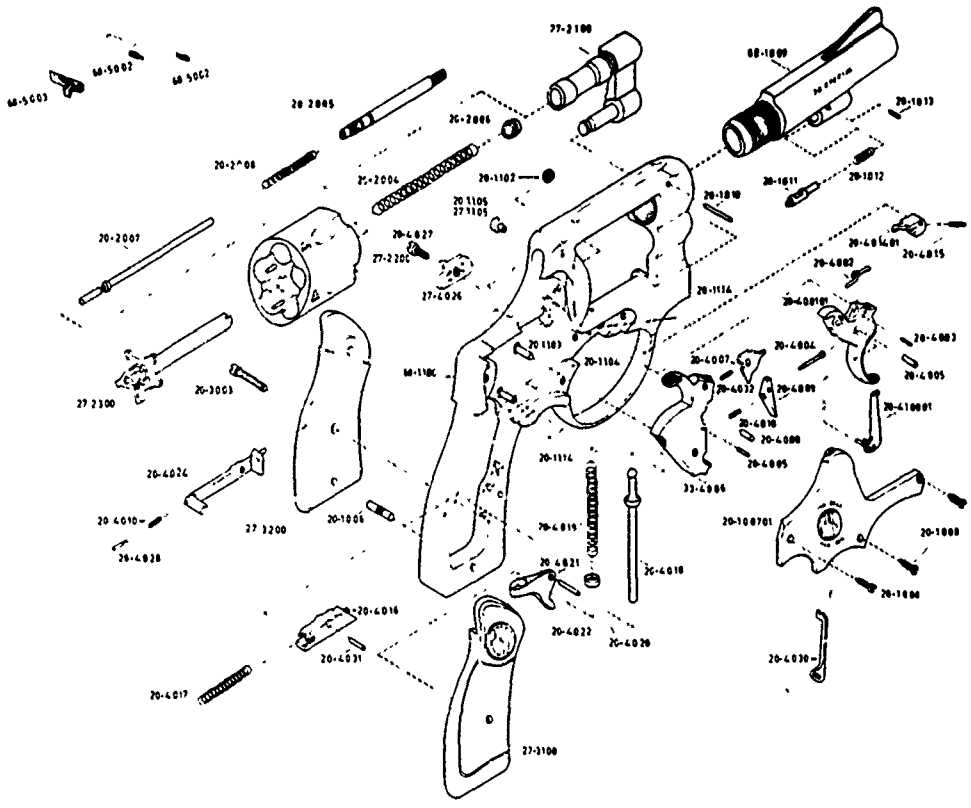
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL
BARREL LENGTH *(Muzzle to Cylinder Face)*		
LESS THAN 4"	0	
FOR EACH ½" OVER 4"	½	
FRAME CONSTRUCTION		
INVESTMENT CAST OR FORGED STEEL	15	
INVESTMENT CAST OR FORGED HTS ALLOY	20	
WEAPON WEIGHT *(Unloaded)*		
PER OUNCE	1	
CALIBER		
.22 SHORT TO .25 ACP	0	
.22 LR AND .30 TO .38 S&W	3	
.38 SPECIAL	4	
357 MAG AND OVER	5	
MISCELLANEOUS EQUIPMENT		
ADJUSTABLE TARGET SIGHTS *(Drift or Click)*	5	
TARGET GRIPS	5	
TARGET HAMMER AND TARGET TRIGGER	5	

SAFETY TEST

A Double Action Revolver must have a safety feature which automatically (or in a Single Action Revolver by manual operation) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safty device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 36" in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.

SCORE ACHIEVED *(Qualifying score is 45 points)*

ATF FORM 4590 (5-74) PREVIOUS EDITION WILL BE USED



Mr. RUSSO. Thank you very much. Any questions?

Mr. FRENZEL. No questions.

Mr. RUSSO. Thank you for appearing. The next witness is Mr. Nelson T. Shields. Would you identify yourself for the record, please.

STATEMENT OF NELSON T. SHIELDS, CHAIRMAN, HANDGUN CONTROL, INC., ACCOMPANIED BY HENRY S. BASHKIN, DIRECTOR OF RESEARCH

Mr. SHIELDS. Mr. Chairman, my name is Nelson Shields, and I am speaking for Handgun Control, Inc. With me today is Henry S. Bashkin, our director of research.

Handgun Control is a registered lobby working solely for reduction of handgun violence by placing reasonable controls over the manufacture, importation, transfer, and possession of handguns.

I know the agony of this violence firsthand, as my son was murdered with one of these imported Saturday night specials. Mr. Chairman, I am appearing here today to lend our organization's support to the enactment of H.R. 5147. In a recently completed multilateral trade agreement, the United States agreed to reduce the import duty on pistol and revolver parts 21 percent to 8.4 percent.

Unless this reduction is rescinded, as would be accomplished by H.R. 5147, there is a strong likelihood of more widespread access to Saturday night specials and a corresponding increase in violent crime.

You have my written testimony, so I will only highlight that testimony here today. I cannot accept, Mr. Chairman, the possibility that

the Carter administration purposely reduced the tariff on Saturday night special parts. We view this as an oversight.

As you know, President Carter has again just this last month publicly pledged to stop Saturday night special production and to work closely with Congress on this vital issue.

I assume, Mr. Chairman, that the Carter administration is fully supportive of your legislation. As we all know, the 1968 Gun Control Act prohibited the importation of nonsporting weapons, commonly called Saturday night specials. However, Congress failed to address the question of imported parts from which Saturday night specials could be made domestically.

In our written testimony, we tabulated the tremendous drop in the importation of handguns after 1968, but conversely the subsequent rise in the importation of handgun parts. From analysis of these handgun imports by customs district, we showed that two-thirds of these imports came in through the port of Miami.

Miami is important because southern Florida is the home of three of this country's major handgun importers and assemblers.

They are RG Industries, Firearms Import and Export Corp., and Excam, Inc. These three companies were respectively the fifth, sixth, and ninth laregst U.S. manufacturers of handguns in 1977. From analysis of these three companies product lines and their production reports to BATF, it is apparent that a major proportion of their U.S. production is nonsporting Saturday night specials.

While their total production equaled approximately 10 percent of total U.S. handgun production, a comparison of their product line with that of the long established New England industry indicates that these three companies account for far more than 10 percent of the output of Saturday night specials.

Mr. Chairman, it is clear to me that a significant proportion of handgun parts are imported into this country for the sole purpose of assembling domestically foreign handguns which could not otherwise be imported. I do not believe this was the intent of the 1968 Gun Control Act nor the desire of this Congress nor this administration.

It is likewise clear that the Carter administration's proposed reduction of the handgun parts tariff will only serve to make this unintentional situation worse. Not only has the President taken a firm stand against the Saturday night special, but so has the Justice Department, many Members of Congress, and even your colleague, Congressman John Dingell, a member of the board of the National Rifle Association.

Mr. Chairman, a tariff reduction on handgun parts that end up as domestically assembled Saturday night specials is a step in the wrong direction. It will only serve to proliferate Saturday night specials in our society and increase the human tragedy they catalyze.

Let no one forget that Saturday night specials were used to assassinate Senator Robert Kennedy, cripple George Wallace, severely wound Senator John Stennis, and almost assassinate President Ford.

In fact, in a recent study of violent criminals in Florida's prison systems, it is shown that 68 percent of the guns they used to commit crimes were Saturday night specials.

In the interest of the American people and the furtherance of congressional and administrative intent, I urge this subcommitee not to

encourage the proliferation of Saturday night specials with a $500,000 annual tariff subsidy, but rather to do everything possible to minimize their manufacture, assembly and sale.

I urge this committee to adopt H.R. 5147.

Thank you.

[The prepared statement follows:]

STATEMENT OF NELSON T. SHIELDS

My name is Nelson T. Shields, and I am speaking as Chairman of Handgun Control, Inc. (HCI), a national non-profit organization. With me is Henry S. Bashkin, Director of Research for HCI. Handgun Control, Inc. is a registered lobby headquartered at 810 18th Street, N.W., Washington, D.C., 20006.

Handgun Control, Inc. exists for one purpose only—to work for the reduction of handgun violence by placing reasonable controls over the manufacture, importation, transfer, and possession of handguns.

The General Accounting Office, in a recent report to the Congress (Handgun Control: Effectiveness and Costs, February 6, 1978), cited a direct relationship between increased handgun availability and increased gun-related crimes in America. It is our firm belief that more effective handgun controls would bring about a reduction in handgun crime and the consequent trauma and agony suffered by thousands of American families each month because of uncontrolled handgun availability. I know that agony firsthand as my son was murdered with an imported "Saturday Night Special."

Mr. Chairman, as part of our organization's wide legislative agenda, I am here today to testify on the specific question of Saturday Night Specials assembled from imported parts. I am appearing to lend our organization's support for the enactment of H.R. 5147. In the recently completed multilateral trade agreement, the United States agreed to reduce the import duty on pistol and revolver parts from 21 percent to 8.4 percent a.v. Unless this reduction is rescinded, as would be accomplished by H.R. 5147, there is strong likelihood of more widespread access to Saturday Night Specials and a corresponding increase in violent crime.

I cannot accept, Mr. Chairman, the possibility that the Carter Administration purposely reduced the tariff on Saturday Night Special parts. We view it as an oversight. As you may know, President Carter has publicly pledged his support to stop Saturday Night Special production and to work closely with the Congress on this vital issue. I assume, Mr. Chairman, that the Carter Administration is fully supporting your legislation.

To begin, I would like briefly to discuss the origin of the phrase "Saturday Night Special." According to Robert Sherill, the author of a book, The Saturday Night Special, the phrase was coined in the late 1950's and early 1960's. A tough handgun law in the city of Detroit forced people to go outside their hometown to purchase handguns. Many would simply go to Toledo, Ohio, less than an hour away, where small, inexpensive, low quality handguns were sold in candy stores, flower shops, filling stations, and shoeshine stands. Since many of these purchases were made to satisfy the passions of a Saturday night, Detroit lawmen began to refer to the weapons as Saturday Night Specials.

Congress recognized that these types of handguns, generally referred to as Saturday Night Specials, were involved in a high percentage of crimes of violence. In fact, it was the assassination of Robert F. Kennedy, with a Saturday Night Special (.22 caliber Iver Johnson Cadet, 2½'' barrel), that finally prompted the Congress to address this question in 1968.

At that time foreign suppliers were the major source of these weapons. So, in the Gun Control Act of 1968. Congress sought to stop the importation of such weapons. However, there was a problem of definition; therefore, while the Act prohibited the importation of "non-sporting" handguns, the responsibility for their final definition was delegated to the Secretary of the Treasury.

Subsequently, with the advice of a committee of experts, the Secretary developed a set of "Factoring Criteria for Weapons," published as ATF Form 4590. Failure to meet or exceed these criteria of size, caliber, safety, and reliability classified a weapon as non-sporting and thus prevented its importation without special permission. The non-sporting terminology has by common usage been replaced by "Saturday Night Special."

However, while the 1968 Act prohibited the importation of non-sporting weapons, i.e., Saturday Night Specials, Congress failed to address the question

of imported parts from which Saturday Night Specials could be made domestically. Maybe the tremendous growth of handgun imports at the time masked the smaller, less dynamic growth in parts importation.

As can be seen from Table 1, that situation has completely reversed itself in the ensuing ten years. The importation of complete handguns has now shrunk to only 16 percent of its 1968 level, while the value of imported handgun parts has not only not dropped since 1968, but has more than doubled in just the last two years.

TABLE 1.—U.S. IMPORTS OF HANDGUNS AND HANDGUN PARTS (1965–68 AND 1976–78)

	Handguns		Handgun parts value
	Number	Value	
1965	347,000	$4,446,000	$1,253,000
1966	515,000	7,265,000	1,617,000
1967	747,000	10,942,000	1,723,000
1968	1,155,000	17,711,000	2,414,000
1976	175,000	9,024,000	1,806,000
1977	172,000	10,222,000	2,680,000
1978	188,000	12,902,000	4,082,000

Source: U.S. Bureau of the Census.

Moreover, from the viewpoint of crime potential, there is a strong indication that the recent increase in importation of handgun parts is supporting a significant increase in the supply of Saturday Night Specials basically of foreign origin, thus undercutting an important provision of the Gun Control Act of 1968. This conclusion is based on an analysis of parts imports by Customs District as shown in Table 2, and the types of handguns offered for sale by selected companies.

What stands out immediately from Table 2 is the preponderance of imports through Miami and their marked growth.

TABLE 2.—U.S. IMPORTS OF HANDGUN PARTS BY CUSTOMS DISTRICT 1976–78

[In thousands of dollars]

Customs district	1976	1977	1978
Baltimore	67	48	21
Miami	1,088	1,869	2,747
New York	368	525	760
St. Louis	146	140	243
Washington, D.C.	58	38	207
San Diego	34	3	
San Francisco	30	18	25
Philadelphia	3	5	54
All other	12	34	25
Total	1,806	2,680	4,082

Source: U.S. Bureau of the Census.

Miami is important to this discussion because southern Florida is the home of three of this country's major handgun importers and assemblers. They are: R.G. Industries, Inc., Firearms Import & Export Corp. and Excam, Inc. These three companies were respectively the 5th, 6th and 9th largest U.S. manufacturers of handguns in 1977, the last full year for which data is available to us. From analysis of these three companies' product lines (per the well established publication, Gun Digest) and their production reports to BATF, it is apparent that a major proportion of their U.S. production was non-sporting Saturday Night Specials. While their total production equalled approximately 10 percent of total U.S. handgun production, a comparison of their production line with that of the long established New England industry indicates that these three companies account for more than 10 percent of the output of Saturday Night Specials.

Mr. Chairman, it is clear to me that a significant proportion of handgun parts are imported into this country for the sole purpose of assembling, domestically, foreign handguns, which could not otherwise be imported. I do not believe this was the intended result of the 1968 Gun Control Act, nor the desire of this Congress, nor this Administration. It is likewise clear that the Carter Administration's proposed reduction of the handgun parts tariff will only serve to make this unintentional situation worse.

One only has to look at the plethora of "Saturday Night Special" bills introduced into Congress in the last decades, or read the litany of public statements and studies on the crime potential of the Saturday Night Special, to confirm that such a backward step is not the desire of congress or this Administration. As I suspect you know, your colleague, Congressman John Dingell, a member of the Board of the National Rifle Association, introduced legislation (H.R. 3773) in 1975 to 'prohibit the sale of the Saturday Night Specials in the United States." In that same year Congressman Hamilton Fish, Jr., from New York put this matter into sharp focus:

The vast proliferation of cheap handguns in this country comes as a result of the importation of handgun parts (less frames) through an apparent "loophole" which does not prohibit the entry of parts. The imported parts are then combined with frames of cheap domestic manufacture in cheap labor areas of the country.

It seems clear to me that closing this "loophole" would be a most effective way of drying up the source of cheap handguns. One need not be for or against gun control; one need not be concerned about Constitutional issues; one need not worry about workable definitions of so-called "Saturday Night Specials;" one need only be for assuring implementation of the intent of Congress in 1968 that no cheaply made handguns be permitted to enter this country.

Likewise the Administration has taken a firm stand against the Saturday Night Special. President Carter has on several occasions, even as recently as March of this year, stated his opposition to widespread proliferation of Saturday Night Specials. Mr. Ronald Gainer, Director of the Office of Policy and Planning of the Department of Justice, in testimony before the House Judiciary Subcommittee on Crime on October 1, 1975, put the matter in this perspective:

As the term is generally used, "Saturday Night Special" refers to a cheap, highly concealable, inaccurate handgun that often is as inherently dangerous to the possessor as it is to the citizenry as a whole. It is of no value to a hunter. It is of no value to a competitive target shooter. It is usually of no value even to a self-respecting weekend "plinker." It is of far less value than a rifle or shotgun to a person who wishes to defend his home against a criminal intruder. The only real value of a Saturday Night Special is to frighten and to kill. Indeed this is the use that has been made of it. In 1974, the BATF traced 4,537 handguns found to be used in crimes in four major cities and found that 70 percent of them were classifiable as Saturday Night Specials.

Mr. Chairman, a tariff reduction on handgun parts that end up in domestically assembled Saturday Night Specials is a step in the wrong direction. It will only serve to proliferate Saturday Night Specials in our society and to increase the human tragedy they catalyse. Let no one forget that Saturday Night Specials were used to assassinate Senator Robert Kennedy, cripple George Wallace, severely wound Senator John Stennis and almost assassinate President Ford. In fact, a recent study of violent criminals in Florida's prison system shows that 68 percent of the guns they used to commit their crimes were Saturday Night Specials.

In the interest of the American people and the furtherance of Congressional and Administration intent, I urge this subcommittee not to encourage the proliferation of the Saturday Night Special with a $500,000 annual tariff subsidy, but rather to do everything possible to minimize their manufacture, assembly and sale—including passage of H.R. 5147.

Mr. RUSSO. Thank you gentlemen. Any questions?

Mr. FRENZEL. No questions.

Mr. RUSSO. Thank you, Mr. Shields.

Mr. SHIELDS. Thank you.

Mr. RUSSO. The committee will stand in recess for 5 minutes.

[Brief recess.]

Mr. VANIK. The next bill for consideration is H.R. 116, Mr. Bafalis, to amend the Agricultural Adjustment Act to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

Mr. Udall, our distinguished colleague, we are very happy to have you with us today.

Mr. UDALL. Thank you, Mr. Chairman.

Mr. VANIK. Your entire statement will be admitted as prepared.

STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. UDALL. Let me just make a couple of points. Perhaps I can set a record for brevity here before this committee.

This is kind of our annual go-round between Mexico and Arizona on the importation of winter vegetables. Almost 90 percent of the winter vegetables in the United States in that season are imported through Nogales, Ariz., where they are consigned to distributors throughout the West.

Obviously, I am concerned about the continued free access of Mexican produce in the American market.

In 1977, our colleague, Mr. Richmond, who is here, and the House Agricultural Subcommittee held a meeting on an identical bill, H.R. 116; he can speak for himself, but after listening to arguments from each side of the dispute and from witnesses from Government agencies, the subcommittee decided not to approve the bill and it was not again considered.

After that loss and a series of hearings in the Senate before Senator Stone's subcommittee, the Florida industry filed a petition with the Treasury Department charging Mexican vegetables were being dumped in the United States. In October, the Treasury Department found no dumping was occurring, and the Department of Commerce has just reaffirmed that decision.

This bill, 116, seeks basically to impose packing standards on Mexico that Florida has imposed on itself. They are not even compatible with the types of tomatoes grown in Mexico, and I suspect that is why they want them imposed.

And it is interesting to note that these standards are not even used by other American growers in California, Texas, or other places for shipping tomatoes from those areas.

Any packaging requirement under which the Florida industry operates is self-imposed. Congress did not impose it; the executive did not impose it; they imposed it on themselves under a marketing order which allows this kind of thing. There is only one marketing order in effect in the United States for winter vegetables, and that is the one in Florida.

No one has restricted the Florida growers. No one has forced them to pack and ship their vegetables as they do; they chose that method because it was best adapted to the kind of tomato they are growing. Yet, they now seek to impose by law a standard which has not been reviewed or analyzed by any outside body or from other areas.

The second point is that we are not even discussing identical product. The Florida industry ships mainly mature green tomatoes which are

picked while still hard and then gassed in transit to force them to ripen. But because they are hard, they can withstand rough handling and shipped further for longer periods of time.

In Mexico tomatoes remain on the vine until pink and are known as vine ripened tomatoes. Vine ripened tomatoes are softer and simply will not take the rough handling that is meted out to mature green tomatoes. And if we adopt this bill and force Mexican growers to adapt to Florida standards, vine ripened tomatoes will no longer be available in the United States in the winter months. They will be seriously damaged by shipping according to Florida methods, and sales would be unprofitable.

The third point is that vine ripened tomatoes grown in California and even in northern Florida are packed exactly as the Mexican vine ripes are packed. In fact, the typical container used in this method is the so-called California lug because it originated in California and is still widely used there.

Supporters of H.R. 116 claim that this bill could simplify the marketplace and reduce potential fraud. In fact, consumers almost never see the packages or crates that the tomatoes are shipped in because the produce is normally unpacked for display purposes. And I doubt that many consumers care what kind of crate is used. Their only concern is that the product is in good condition.

Mr. Chairman, H.R. 116 is unnecessary; it represents yet another attempt by the Florida tomato industry to unjustly undermine fair competition from the Mexican growers. And I urge my colleagues to reject this proposal.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, I appreciate this opportunity to make my position of H.R. 116 known to the Members of the Subcommittee on Trade. This hearing really represents the latest battle in a continuing dispute between Arizona and Florida over the importation of Mexican winter vegetables in the U.S. Almost 90 percent of the winter vegetables brought in to the U.S. from Mexico are imported through Nogales, Arizona, where they are consigned to distributors and then sold to markets throughout the West. Obviously I am concerned about the continued free access of Mexican produce to the American market.

In 1977 the House Agriculture Subcommittee on Domestic Marketing held a hearing on a bill that was identical to H.R. 116. After listening to arguments from each side in the dispute and from witnesses from several government agencies, the Subcommittee decided not to approve the bill, and it was never again considered. After that loss, and after a series of hearings in the Senate before Senator Stone's Subcommittee on Foreign Agriculture Trade, the Florida tomato industry filed petitions with the Treasury Department that charged Mexican vegetables were being "dumped" in the U.S. Last October the Treasury Department found that no dumping was occurring, and the Department of Commerce has just reaffirmed that decision.

H.R. 116 seeks basically to impose packing standards on Mexico that Florida has imposed on itself, which are not compatible with the type of tomato grown in Mexico, and which are n even used by other American growers of tomatoes for shipping their goods.

First, any packaging requirement under which the Florida industry operates is self-imposed. Agriculture marketing orders allow growers who have banded together to adopt certain standards on size, minimum package size, etc. There is only one marketing order in effect in the U.S. for winter vegetables, and that

is the one in Florida. No one has "restricted" the Florida growers, no one has forced them to pack and ship their produce as they do. They chose that method because it was best adapted to the kind of tomatoes they are growing, yet now they seek to impose that standard—which has not been reviewed or analyzed by any outside body—on growers from other areas.

This brings me to my second point, which is that we are not even discussing identical products. The Florida industry ships mainly "mature green" tomatoes, which are picked while still hard and then gassed in transit in order to force them to ripen. But because they are hard they can withstand rough handling and can be shipped farther and for longer periods of time. In Mexico the tomatoes remain on the vine until pink, and are know as "vine-ripened" tomatoes. They are sized according to at least seven different size standards, then hand-packed in lugs that hold them snugly in place. Mature green tomatoes are literally dumped into open containers, then shipped and sometimes later repacked for the market.

Vine-ripened tomatoes are softer and simply will not take the rough handling meted out to mature green tomatoes. And if we adopt this bill and force Mexican growers to adapt to Florida standards, vine-ripened tomatoes will no longer be available in the U.S. in winter months. They would be seriously damaged by shipping them according to Florida methods, and sales would simply be unprofitable.

Third, vine-ripe tomatoes grown in California and even in northern Florida are packed exactly as Mexican vine-ripes are packed. In fact, the typican container used in this method is known as the "California lug" because it originated there and is still widely used by California growers. California farmers also use the Florida methods, but only when they ship mature greens. I think this reemphasizes that we have two different products and that it doesn't make much sense to require that they both be shipped in the same way.

Supporters of H.R. 116 claim that this bill could simplify the marketplace and reduce potential for consumer fraud. In fact, consumers almost never see the packages or crates that tomatoes are shipped in as the produce is normally unpacked for display purposes. And I doubt that many consumers care what kind of crates are used. Their only concern is that the product arrives in good condition. Continued use of the California lug will assure the availability of that quality product.

Producers, distributors and retail outlets are all familiar with the California lug. It has been used for years out West, and as I noted, not just by Mexican growers. There's no confusion in the market, no ambiguity about what tomatoes are graded in what size standard. The only potential confusion I can see is that which might arise if H.R. 116 is passed, because then we would have one standard container for the California summer vine-ripe tomatoes: the California lug, and another standard crate for Mexican winter vine-ripe tomatoes: the Florida box.

H.R. 116 is unnecessary. It represents another attempt by the Florida tomato industry to unjustly undermine fair competition from Mexican growers. I urge my Colleagues to reject this proposal.

Mr. VANIK. Thank you very much.

Any questions?

Mr. FRENZEL. No, I want to thank the witness. We have been kicking this winter vegetable matter around for a long time. We appreciate the fact that you have stayed with this problem over the years. We appreciate it.

Mr. UDALL. I thank you, my friend. The last thing we need at this point is to worsen relations with Mexico; we have a longstanding agenda of major problems. We urge them to build up their economy and employ the people there so they will not come across to the United States. And then when they set up a profitable enterprise, an industry like this, some folks want to close it down.

Mr. VANIK. I sometimes think we ought to be moving toward a common market which would include Mexico and Canada. I feel that would be a desirable thing. We do it somewhat with automobile parts and automobiles. And I think that has worked out generally very well.

But I see the unification of the continent as really the thing to help maintain North American leadership in the world—I do not think the United States can do it alone anymore. We need to consolidate our efforts and work as much as we can toward free trade between the whole continent.

Mr. UDALL. It is a concept that intrigues me very much, and I support looking into it and going further with the idea.

Mr. VANIK. Thank you very much.

Mr. UDALL. All right. Thank you, Mr. Chairman.

Mr. VANIK. Our good friend, Fred Richmond, chairman of the Agriculture Subcommittee. We appreciate your testimony. It will be admitted in the record as if read. You may read from it or excerpt from it.

STATEMENT OF HON. FREDERICK W. RICHMOND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. RICHMOND. Thank you, Mr. Chairman. I would like to express my agreement with the remarks of my distinguished associate from Arizona.

As I mentioned, I chaired a hearing on October 4, 1977. The bill at that time was numbered H.R. 744. It is identical to H.R. 116 which is before you today. At that time we devoted an entire day to taking testimony on the question of whether imported fresh winter tomatoes should be packaged in the same way as fresh winter tomatoes from Florida.

Testimony at that time showed that packaging standards which exist in California is basically a self-inflicted wound. They have a marketing order, as Mr. Udall mentioned.

Testimony further showed that fresh winter tomatoes from Florida are picked at the mature green stage; they are subjected to ethylene gas to give them color. They are hard. And they are handled entirely differently from vine-ripened tomatoes. Certainly, vine-ripened tomatoes are preferable; we do get a much higher quality of vine-ripened tomato from Mexico.

[The prepared statement follows:]

STATEMENT OF HON. FREDERICK W. RICHMOND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

The bill you have for consideration before your Subcommittee today, H.R. 116, introduced by Mr. Bafalis of Florida, would amend the Agricultural Marketing Agreement Act of 1937 so that imported fresh tomatoes in the winter would have to be packaged in the same manner as fresh winter tomatoes grown in Florida.

The alleged need for this bill is to create a standardized packing or crating method on the grounds that uniform packaging would prevent confusion in the marketplace. This argument has been heard before, in fact before my Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition of the Committee on Agriculture.

On October 4, 1977, I chaired a hearing on H.R. 744, which was identical to H.R. 116, which is before you today. At that time we devoted an entire day to taking testimony on the question of whether imported fresh winter tomatoes should be packaged in the same way as fresh winter tomatoes from Florida.

Testimony at that time showed that the packaging standard which exists in Florida is a "self-inflicted wound." The Agricultural Marketing Agreement Act gives the growers of certain areas the right to impose cetrain standards, including packing standards on themselves. Congress does not impose the packaging

standard, the growers themselves vote a marketing order and the growers can lift or impose various standards as they please, subject to the concurrence of the Secretary of Agriculture.

Testimony also showed the following points:

Fresh winter tomatoes from Florida are picked at the mature green stage and then subjected to ethylene gas to give them color. The mature green tomatoes are hard and can withstand rough handling, including mechanical picking, size determination, and packing. Mature green tomatoes can be handled very much like apples because they are just as hard. In fact, mature green tomtoes seem to be mechanically graded and sized on conveyor belts, just like applies, and then are jumble packed in cardboard cartons, just like apples.

Fresh winter tomatoes are imported almost solely from Mexico through the entry port of Nogales, Arizona. While 90 percent of the Florida winter tomatoes seem to be of the mature green type, about 90 percent of the imported tomatoes are of the vine ripe type. Vine ripe tomatoes are not the bright red tomatoes that we see in summer. Vine ripe tomatoes are pink or show a slight blush of color, but they are not hard and cannot withstand rough handling. Vine ripe tomatoes, therefore, are hand packed in flats or lugs.

Northern Florida growers which pick their tomatoes at a slightly later time in the year pack their tomatoes in flats or lugs, and hand pack the tomatoes because they too grow vine ripe tomatoes that cannot withstand rough handling. Because the marketing order does not extend to northern Florida, the tomato growers there are not required to jumble pack like their fellow growers in southern Florida.

In the warmer months, when California is producing tomatoes, the growers there use flats and lugs. California tomato growers also hand pack their vine ripe, and therefore, easily bruised tomatoes. In fact, the imported Mexican winter tomatoes are packed in what is known in the trade as "California lugs."

Although packaging standards are often justified on the basis of consumer protection, bulk packaging of tomatoes has nothing to do with consumers. Tomatoes are sold by the pound at the retail stores and consumers virtually never see the 20 or 13 pound cartons and containers. How the tomatoes are packed for the wholesale trade has little or no consequence to the consumer. For obvious reasons, bulk buyers know what kind of tomato they are buying regardless of the methods of packaging, and bulk buyers distinguish between vine ripes and gassed mature green tomatoes. The two are treated differently in the trade and there is no confusion in the marketplace.

There is a long history of competition between fresh winter Florida tomatoes and imported fresh winter tomatoes, mostly from Mexico. Traditionally, at least for the last ten or more years, the market has been shared about equally by imports and domestic tomatoes. Because production is so dependent on weather conditions, one or the other captures a slightly larger share of the market during especially favorable weather conditions. This healthy competition has insured that consumers have fresh tomatoes available all year long at a reasonable price.

Even though Florida growers have admitted they cannot supply the entire United States market, they have constantly tried to limit imports through various means, including size restrictions, packaging restrictions, complaints about pesticide residues, and allegations of dumping. Separate investigations have shown that there is no dumping and that incidents of pesticide residues are apparently no worse than for domestic growers. Imported fruits and vegetables are subject to the same rigorous Food and Drug Administration investigations as domestic fruits and vegetables.

Creation of a packing standard for imported tomatoes would likely be considered by our Mexican friends, as well as by all our international trading partners, as a nontariff barrier.

For the various reasons I have cited, I urge you not to pass H.R. 116. Specifically, H.R. 116 is not a revenue measure. It is a packaging standard bill that would create a nontariff trade barrier and would invite our international trading partners to retaliate against us. The United States leads the world in negotiating the MTN and in abolishing as many nontariff barriers as possible. In my opinion, the United States should not now go back on its own word and start creating new trade barriers.

Mr. VANIK. Is there a health problem with the ethylene gas treatment?

Mr. RICHMOND. No; Mr. Chairman, there is no particular health problem that we know of. It is just that we do not think it should be really necessary to take a hard green tomato and gas it in order to make it attractive to the American consumer when it possible to get vine ripened tomatoes from northern Florida, from California, and from Mexico.

Mr. VANIK. My own feeling is that the consumers of America could use all of the tomatoes that are produced and all the winter vegetables. And we talked at one time about urging California to get the early part of the season and Mexico the middle part of the season and the Florida growers the end of the season which would suit all of the weather systems.

I was wondering whether anything has been developed on that score. There is enough consumption here; the demand is great. It's a good vegetable. We starve for it in the wintertime when we are looking for something fresh. And it seems to me we ought to be able to figure out a way, or the producers ought to be able to figure out a way, to maximize their production so it meets all sectors of the market.

Mr. RICHMOND. The fact, Mr. Chairman, is that——

Mr. VANIK. I remember one time we talked about taking a couple of weeks off the beginning of the season so California could finish off its harvest and maybe cutting back, urging the Mexicans to stop their production at the time the Florida production would phase in so that they could concentrate on different sectors of the market and have the entire country as their market.

The richest agricultural crop in my communities are tomatoes under glass, and there is a time when there are Cleveland area tomatoes flown all over America. Apparently there is a time when the rest of them are not in or they are not at their very best production. Is there any possibility that something like that might be worked out?

Mr. RICHMOND. Mr. Chairman, you almost have to let the market take care of that itself.

Mr. VANIK. If we had a lower price, the consumer could use a lot more tomatoes. I take one tomato now and we have a salad and feed 12 people with it sometimes. If the tomato was more reasonably priced, we could probably put three tomatoes in it. Even though the production might be of less yield by having us consume more, that might more than offset the problem.

Mr. RICHMOND. Right now, Florida is producing about two-thirds of the winter tomatoes against Mexico's only one-third. So historically many of us preferred a 50–50 division allowing Mexicans to produce about half.

Mr. VANIK. I am trying to figure out which is the fairest thing to do: Whether it is fair for Americans in California using labor that comes over the border to work on the tomatoes or whether the tomatoes should be grown in Mexico on lands owned by Americans using Mexican labor or whether tomatoes should be raised in Florida where the labor is island labor that is brought in for that purpose.

I guess the only real American tomatoes are the ones that are grown in my district when you really get down to it. [Laughter.]

And if they ever start a "buy America" deal, I am going to promote the glass house tomato.

Really, the point that I make is that is it not time that we got this whole subject out of litigation? I am troubled by the unsettlement that there must be in the industry with the cases, the antidumping cases and the court reviews, which are all legitimate processes we provided for under the law.

But I never found, in my opinion, that a legislative solution or even a judicial solution is really going to be the best one.

I was wondering what we can do or what you have proposed in your committee to try and deal with the marketing in such a way that you provide a good opportunity for the producers and provided the maximum kind of advantage to the consumer.

Mr. RICHMOND. We can do a lot more negotiating with the Mexican Government. I believe Mr. Udall and members of the Florida delegation have been involved in that. But my personal feeling on Mr. Bafalis' bill alone, H.R. 116, is that we do not need the bill, that it is not the solution.

The solution, as you say, would more than likely further negotiations with the Mexican Government to have them produce vine ripened tomatoes at the optimum moment for the American consumer.

Right now Florida is doing much, much better than Mexico in the American market; as I said, it had been a 50–50 break. Now Florida seems to have two-thirds of the market. That was this year because Florida has a very good crop of tomatoes and Mexico did not.

Mr. VANIK. Where did that labor come from? The retired people do not harvest tomatoes; they just buy them.

Mr. RICHMOND. The Florida Labor Department——

Mr. VANIK. I understand that imported labor picks a great part of the crop. I do not know. I would have to check that. Well, thank you very much.

Mr. RICHMOND. Thank you.

Mr. VANIK. The next witness is the Florida Tomato Exchange represented by John H. Himmelberg.

Mr. Bafalis, did you want to make a statement? This is your legislation.

Mr. BAFALIS. I would like to ask a couple of questions.

Mr. VANIK. Would you mind waiting for a couple of questions? Mr. Richmond has to——

Mr. RICHMOND. Mr. Udall would like to yield too.

Mr. VANIK. All right. Go ahead.

Mr. BAFALIS. My questions are for Mr. Richmond, really. They are not quite on this bill, Mr. Chairman, but since this is something we are directly involved in, and I have some concerns. A recent article appeared in the Fort Meyers Express on Sunday, March 23. I would just like to read a paragraph.

It says:

> Mexican tomatoes containing a residue of selasium, a pesticide illegal in the United States, were discovered by Federal authorities when the produce crossed the border to Nogales, Arizona three weeks ago. These shipments of tomatoes containing the illegal chemical subsequently made their way to wholesale houses on Florida's east coast.

My question is: Would you support labeling of produce coming from foreign countries identifying the country of origin so that the buyer in this country knows whether he is buying Mexican corn, Mexican tomatoes, or whatever it might be, and if there is concern of pesticides being used that we do not allow in this country, at least the consumer can make that decision?

Mr. RICHMOND. Mr. Bafalis, I support labeling imports with the country of origin.

Mr. BAFALIS. This would be a great step forward, I think.

Mr. RICHMOND. Yes. I would like to see very informative labels put on produce, giving people an idea of the vitamins, the nutritive value of that produce, the same way as packaged food.

Mr. BAFALIS. On other products we import, we do have a country of origin labeling requirement, except agricultural products.

Mr. RICHMOND. Right. And that ought to be changed.

Mr. BAFALIS. And we have heard the argument over and over again.

Mr. RICHMOND. No; we could label these products with the country of origin. Now, as far as pesticides, I have worked very diligently on that one. As you know, the job of the USDA is to inspect all shipments of produce that come across our borders .We are increasing our inspection force. We are doing everything possible to make sure that those pesticides that are banned in the United States are not used on pro-products that are shipped into the United States.

Mr. BAFALIS. Unfortunately——

Mr. RICHMOND. I think you will agree that none of us want to do anything to further exacerbate our present relations with Mexico. And whatever we can do through our USDA and through our inspection and through talking, we would be a lot better off.

Mr. BAFALIS. The concern I have had—you and I have been over this many times before—is that we do not feel the competition is fair. We do not mind the competition as long as the competition is fair. They have a marketing order and the battle has gone on for a number of years. There are some things that we have imposed upon ourselves. But I think the consumer benefits by that marketing order.

And there are those of us in Florida and all over the country that feel it is terribly unfair to allow foreign competitors not to have to meet the same standards that our people have to meet. That is the crux of this whole matter. We are not saying that we do not want Mexican tomatoes in Florida or in the United States. We just think they ought to compete on the same basis as our growers have to compete. That is all we are asking for.

I find it difficult to understand every time we get into this. We are not dealing with the Department of Agriculture. We are dealing with the State Department. We are dealing with the Department of Commerce. We are dealing with oil versus tomatoes. We all know that.

Plus, in all deference to my friend Mr. Udall, we are dealing with a lot of people that have a great deal of money invested, American money, growers that are concerned about what they are going to lose if the Mexicans do not have to compete on the same basis as do our people.

That is why this battle has gone on for a long time.

Mr. RICHMOND. As you know, Mr. Bafalis, Florida tomatoes this year are about two-thirds of the total.

Mr. BAFALIS. Yes, and the number of people involved in the production of tomatoes in Florida has dropped dramatically in the last 10 years, too.

And it is going to continue to drop. We have had a good year this year. And while I—not getting involved in the antidumping suits that have been filed in the courts now—I just feel, and I think most of my constituents involved in the tomato business in Florida feel, that they do not have the support of their Federal Government in this matter. We are trading agriculture for oil, and if in fact the time comes when we do not have very many tomato growers left in Florida, I just wonder how well the consumer will benefit if our only producer is south of the border.

I cannot believe the price is going to be lower in that case.

Mr. UDALL. I just wanted to say that I concur with Mr. Richmond on the question of labeling, and I think it is fair to let people know where products are coming from. Nobody tolerates pesticides less than I do, and I want to make sure that we stop that evil. As Fred said, they have been investigating.

But these two things have nothing whatever to do with the bill.

Mr. BAFALIS. No, but I thought while I had you here it was a good chance to ask that question.

Mr. UDALL. I bet my friend from Florida has made a lot of speeches about Government interference and Government regulation and pettiness and that sort of thing. You know, how outrageous it is for our Government to say to people in Mexico, you must pack tomatoes in a certain box.

If you were any kind of business in this country or another country and the U.S. Government was regulating in that sort of detail, I think you would be outraged. We need more competition and we need deregulation of the sizes of boxes.

Mr. BAFALIS. I could not agree more as long as it is fair. It is not fair when our people package a certain way and people are allowed to bring stuff in across the border that is not packed the same way and then we do have a different price level. That is not fair competition. I think the gentleman is well aware of that.

The other thing I would like to comment on, Mr. Chairman, is that we do not use offshore laborers to pick tomatoes. We use them for sugar and they have to be certified by the Department of Labor. Since there are adequate people to pick tomatoes, we are not allowed to import that labor.

Mr. FRENZEL. Mr. Chairman, I would like to state for the record that I am not aware that we have a lot of labeling requirements for products coming in from outside this country that require the labeling of the country of origin. I would like to further state that I find most labeling laws highly protective. They are not normally in the interest of the consumer, but usually are aimed so that the producer will have a better shot at the market.

And I am not at all thrilled at having somebody rubber stamp the word "Florida" or "Mexico" on the tomatoes that I put on my table.

I also do not want to have to buy them in a neat package that tells me where they came from. I like to buy them one or two or three or as many at a time as I want to. And obviously this committee has nothing to do with that, but I would sure not vote for such legislation.

Mr. BAFALIS. We are not talking about you going into the supermarket and buying a package of tomatoes. We are talking about the way they ship them in gross quantities. Florida tomatoes are also packaged loosely in the vegetable bin.

Mr. FRENZEL. Well, sure, but then the consumer has not any idea where they come from and——

Mr. VANIK. Well, I sometimes visit our local stores where there are a lot of imported goods sold; it is hard for me to find out the country of origin on anything, whether it is a chair or table or shirt. I see "Fruit of the Loom," and I do not know whose loom is involved. About the only thing American is the label that goes on something.

I really do not know how effective all of that is. That is not our jurisdiction.

Mr. FRENZEL. I am for Mr. Udall's speech about all this Government regulation.

Mr. VANIK. I thought, as he gave that speech, he might be elected as a Republican nominee. [Laughter.]

Mr. UDALL. I have been waiting for a draft. [Laughter.]

Mr. VANIK. Thank you very much.

Mr. UDALL. Thank you.

[The following was subsequently received:]

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C., April 10, 1980.

Hon. CHARLES VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The bill you have for consideration before your Subcommittee, H.R. 116 introduced by Mr. Bafalis of Florida, would amend the Agricultural Marketing Agreement Act of 1937 so that imported tomatoes would have to be packaged in the same manner as domestic tomatoes. The establishment of such a requirement might, in my opinion, be a non-tariff barrier and our trading partners could retaliate against the United States by establishing their own packaging requirements against our own agricultural exports.

The Agricultural Marketing Agreement Act exempts farmers and growers from antitrust laws and allows them to band together to form a committee which can seek a "marketing order" from the Secretary of Agriculture to regulate the quality, size, and volume of their agricultural products. The law allows farmers' groups to propose regulations which are ratified by the Secretary of Agriculture. As the law is now written, imported fruits and vegetables must meet existing "marketing orders" in regard to quality and size, but not packing regulations.

On face value, H.R. 116 appears to be a non-controversial bill because it merely seeks to impose some packaging regulations on imported tomatoes. The bill, however, is not that simple.

Marketing orders, under which the packing regulations for tomatoes would be imposed, are in effect for tomatoes only in Florida and Texas, and the Texas program is inactive. The Florida program is in effect usually from November through the following mid-June. Tomatoes are grown in a number of states, of course, during the summer months. During the winter season—December through March—the weather is not suitable for outdoor cultivation of tomatoes in states other than Florida, which provides approximately half of the fresh winter produce.

The other half of the winter produce supply especially tomatoes, comes from Mexico. In other words, the only other competitor for Florida winter tomatoes is Mexican winter tomatoes.

Since the Florida marketing order is the only one in effect and since Mexico is virtually the only country which ships fresh winter vegetables to the United States, the proposed amendment to section 8e by H.R. 116 would directly and only affect Mexican tomatoes.

There is a long history of competition between Florida-grown and Mexican-grown tomatoes. Depending on favorable weather conditions, Florida traditionally supplies at least half of the domestic supply. Florida growers have admitted that they cannot possibly supply the entire market but Florida growers have desired not only a larger share of the market but also higher prices for their produce. The free market competition of Mexican tomatoes, however, has continued to provide consumers with a steady supply of fresh winter produce at reasonable prices.

On October 4, 1977, my Subcommittee on Domestic Marketing Consumer Relations, and Nutrition, held a hearing on H.R. 744, a bill identical to H.R. 116. H.R. 744 was introduced by Mr. Bafalis of Florida as was H.R. 116.

My Subcommittee did not report out H.R. 744. The preponderance of testimony showed that its enactment would be counter to our interests in international trade. Floyd E. Hedlund, then Director of the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, testified "The Department recommends against the enactment of H.R. 744. While we support the concept of uniform treatment between domestic and imported products on the matter of quality, we do not accept the idea that imported commodities should be made to comply with our packing requirements or other marketing practices." He also said, "As an exporter, the United States would not favor the imposition of such requirements on its productions moving into foreign markets."

Agriculture Secretary Bergland wrote: "Section 8e now requires that imports of selected commodities meet the same minimum grade, size, quality, or maturity standards imposed on domestic shipments under a marketing order. This proposed legislation would expand the statutes' regulatory authority on imported commodities beyond quality-related factors. This is not a quality regulation but rather a pack specification."

The record of the hearing before my Subcommittee shows the following exchange between myself and Mr. Hedlund:

Mr. RICHMOND. Mr. Hedlund, why do you request the Floridians to pack and size them [tomatoes] that way?

Mr. HEDLUND. We did not request the Floridians to adopt any regulations. They proposed to the Secretary of Agriculture that they adopt these regulations [marketing orders] and the Secretary of Agriculture concurred and then issued the regulations.

Mr. RICHMOND. If it is good for the Floridians, why not for the Mexicans?

Mr. HEDLUND. It is the old principle, Mr. Chairman, do we want all of our trading partners around the world to do exactly like we do. It leads inevitably to other people requiring us, in our exports, to package our commodities the same way as the country to which we ship them. We don't believe that that is in the interest of free trade.

Florida growers have complained that Mexican growers commingle sizes and thereby gain an unfair advantage over Florida tomatoes which must be packed one size only to a box. The implication is that Mexicans commingle small and large tomatoes. I am not aware of any evidence that supports this assertion. Testimony and visual demonstrations before my Subcommittee showed that Mexicans use tomatoes of two contiguous sizes to ensure tight fit. If slightly larger and slightly smaller tomatoes were not used, the hand-pickers would not be able to ensure a tight fit in the box. Loosely packed tomatoes would move and bruise during transit and be unsaleable.

The packing regulations to be established by H.R. 116 would apply only to the wholesale trade, and the buyers and sellers in the business know how tomatoes are packed and what each size designations mean. For example, Florida mature green tomatoes are always packed in 30 pound cartons and the size is clearly marked. Mexican tomatoes, packed in two or three layer lugs or flats are clearly visible to the buyer and the containers are marked by numerical designations.

I understand that the Trade Subcommittee is planning to hold hearings on H.R. 116 on April 17, 1980. I would greatly appreciate the opportunity to personally testify before your Subcommittee at that time.

All good wishes.

Yours sincerely,

FRED W. RICHMOND, *Chairman.*

Mr. VANIK. Our next witness is from the Florida Tomato Exchange, Mr. Himmelberg, Washington counsel.

Your statement will be in the record as submitted.

STATEMENT OF JOHN H. HIMMELBERG, WASHINGTON COUNSEL, REPRESENTING WAYNE HAWKINS, EXECUTIVE VICE PRESIDENT, FLORIDA TOMATO EXCHANGE

Mr. HIMMELBERG. It is Mr. Hawkins' statement. I am pinch-hitting for him. He was unable to attend. I feel highly complimented and honored that I am introducing—speaking about a bill that has such strong opposition with Members of Congress and the gentlemen following me.

I do have a few points to make and I will make them very brief because the main points are stated in Mr. Hawkins' statement.

First of all, the Florida Tomato Exchange is a group of Florida tomato farmers and shippers. The bill that is under consideration would amend section 8(e) of the Agricultural Adjustment Act as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes marketed under a Federal marketing order.

There was some discussion about California operations. California is not in competition with Mexico. Basically what we are talking about is winter vegetables, winter tomato production.

I think it is instructive to look at the legislative record of this amendment because the identical language has been before the House and Senate in the past. The amendment to include pack regulations passed the Senate as S. 2440 in 1976 and passed the Senate again on July 25, 1977 as S. 91. Representative Dan Fascell amended the 1977 farm bill to include the exact wording contained in S. 91 and it passed by voice vote on July 25, 1977.

So there was support on both sides of the aisle for this language. Although S. 91 had been approved by the Senate and the House had approved the amendment on the floor, it was stricken from the farm bill in conference committee due to lobbying from Mr. Udall and others.

As I said before, our views have stated—have been said before before this committee and before other committees. I would like to point out, though, a little bit of the history of section 8(e)—8(e) was enacted in 1954 and was described by the late Senator Holland as follows, and I am quoting him:

> The provision is manifestly fair and is sometimes referred to as the golden rule amendment.
>
> It imposes no requirements on the imported commodity that is not also imposed on the domestic commodity. It provides for adequate notice so that foreign producers and importers will have ample opportunity to adjust their operations.
>
> It does not seek to exclude imports, but rather to make possible market regulations of equal benefit to domestic and foreign producers.

We suggest that this regulation not only will help the Florida tomato growers, but we feel that the Mexican growers will not be injured in any way and certainly can work under these provisions of this regulation.

We have been advised informally fairly recently that the Department of Agriculture, after opposing this bill for many years, would be in favor of it; however, after talking with some people, again informally, at the Department of Agriculture, I am not sure they are going to support it. In fact, I think the best they will do is they will take no position.

They announced—the representative from the Department of Commerce testified last month the Department of Commerce is opposed to this. But that is nothing new.

When you are talking about—and Congressman Udall mentioned restrictive regulations—I might pose the question about trying to import tomatoes into Mexico when Mexico is in production; we believe that it is virtually impossible to do that and because of the restrictive permit situation in Mexico, even in the offseason it is virtually impossible to import tomatoes into Mexico.

Again, what we are asking for is free trade, but free trade in that it also be fair trade.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF THE FLORIDA TOMATO EXCHANGE, WAYNE HAWKINS, EXECUTIVE VICE PRESIDENT

SUMMARY

H.R. 116 would amend Section 8(e) of the Agricultural Adjustment Act of 1933, as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes marketed under a Federal Marketing Order.

History of Section 8(e)?—Section 8(e) was enacted on August 28, 1954, and was described by the late Senator Holland as follows: "The provision is manifestly fair and is sometimes referred to as the golden rule amendment. It imposes no requirements on the imported commodity that is not also imposed on the domestic commodity. It provides for adequate notice so that foreign producers and importers will have ample opportunity to adjust their operations. It does not seek to exclude imports, but rather to make possible market regulations of equal benefit to domestic and foreign producers."

Why the Problem?—Regulations imposed on Florida handlers of fresh tomatoes under Marketing Order No. 966 prevent them from commingling different grades of tomatoes in a shipping container and also from commingling different sizes of tomatoes within a shipping container except for the sizes of large and larger. Both of the regulations are important and are designed to create orderly marketing of fresh tomatoes. Different sizes of tomatoes, such as small, medium or large, sell for different prices and the same is true with different grades of tomatoes, such as U.S. 1, 2 or 3.

The U.S.D.A.'s interpretation of Section 8(e) required that imports only meet the minimum requirements being imposed on domestic producers under a Federal Marketing Order. Hence, tomato imports from Mexico must only be a U.S. No. 3 grade and at least 2-3/32 inches in diameter. All grades and sizes can be commingled in the shipping container since the U.S.D.A. contends that commingling is a pack regulation and not controllable under Section 8(e).

How to Solve the Problem?—The U.S.D.A. recommeded two alternative solutions: (1) Sue the Secretary of Agriculture to determine if commingling is in fact a term or condition of grade and size regulations and is therefore controllable under Section 8(e); or (2) Amend Section 8(e) to include pack regulations. Florida producers decided to try to amend Section 8(e), the U.S.D.A. assisted in the drafting of the perfecting amendment.

Legislative Record of the Amendment.—The amendment to include pack regulations under Section 8(e) passed the Senate as S. 2440 in 1976 and passed the Senate again on July 25, 1977, as S. 91. Representative Dante Fascell amended the 1977 Farm Bill to include the exact wording contained in S. 91 and it passed the House by voice vote on July 25, 1977. Although S. 91 had been approved by the Senate and the House had approved the amendment on the floor, it was stricken from the Farm Bill in Conference Committee due to heavy lobbying efforts of Congressional representatives from Arizona, South Dakota and Texas. The Subcommittee on Domestic Marketing, Consumer Relations and Nutrition scheduled hearings for September 29, 1977, and subsequently changed them to October 4, 1977. A vote was never taken on the bill.

WHAT WOULD THIS LEGISLATION ACCOMPLISH?

1. It would standardize the sizes and grades of tomatoes offered for sale in the United States removing the distinct advantage now enjoyed by imports.
2. It would help create orderly marketing.
3. It would benefit the grower, shipper, importer and ultimate consumer.
4. It would be fair to domestic and foreign producers alike, since they would be treated equally.
5. It would help prevent drug smuggling into the United States.
6. It would not create a trade barrier since no regulations would be placed on imports that are not also required on domestic production.
7. It would not decrease imports of tomatoes.
8. It would not increase price to the consumer.
9. It would not increase unemployment in Mexico.
10. It would not cause drastic changes in mode of operation in Mexico.
11. It would not control the type of containers being imported.
12. It would not create a hardship for other states.

U.S.D.A.'s Position.—Due to changes in personnel over the past two years, U.S.D.A. has agreed to support this amendment. This commitment was obtained after Florida growers met with Secretary of Agriculture Bergland and his staff to discuss ways the U.S.D.A. could help solve some of their problems.

MEXICO'S ADVANTAGES

(a) Spot inspections at the border to check for compliance although they are not authorized in Florida.
(b) Mexican producers use pesticides and other chemicals on their crops that are not approved for use in the United States. See Exhibit No. 5.
(c) There is virtually no check at the border for pesticide residues. The ones taken are after the tomatoes have been washed; in Florida, they are taken before washing.
(d) They commingle grades and sizes freely creating havoc with orderly marketing.
(e) At times they consign tomatoes all over the United States, using it as a dumping ground and seriously undermining Florida's F.O.B. market.
(f) They enjoy cheap labor and are not burdened with numerous government rules, regulations or taxes.
(g) They export tremendous volume to the United States, paying only a very small duty established many years ago, although their border is closed to United States shipments when they are in production.

STATEMENT

My name is Wayne Hawkins. I am Executive Vice President of the Florida Tomato Exchange, a non-profit cooperative agricultural association whose members ship about 80 percent of the volume of fresh tomatoes from Florida each year. I am also Manager of the Florida Tomato Committee which is the administrative committee for Marketing Order No. 966 which regulates the handling of fresh tomatoes shipped from the "production area" of Florida as defined in the Order.

Tomato production is the giant of the vegetable industry in Florida. Last season, Florida shipped in excess of 30 million 30-lb. equivalents of tomatoes with an F.O.B. value of 200 million dollars. This represents about 30 percent of the total value of all vegetables produced in Florida last season.

I would like to thank this Committee for giving me the opportunity to come before you today and testify in behalf of the Florida Tomato Industry which strongly supports H.R. 116 which would provide for a perfecting amendment to Section 8(e) of the Agricultural Marketing Agreement Act of 1937, as amended, by including regulations which would apply to the contents of imported containers in the same manner that they presently apply to domestic tomatoes under a Federal Marketing Order.

Section 8(e) of the Agricultural Marketing Agreement Act of 1937, as amended, was enacted on August 28, 1954, and was introduced by the late Senator Spessard L. Holland. It was originally written to cover only tomatoes, avocados, limes and grapefruit. Irish potatoes were added on the floor of the Senate. In conference with the House on their bill which had already passed, green peppers, cucumbers

and eggplants were added. The other commodities covered under Section 8(3) were added at later dates.

For several years prior to the enactment of Section 8(e), the Florida fruit and vegetable industry had been studying marketing orders seeking ways to improve marketing conditions. Various commodity groups had not been able to determine how they could make use of the marketing order machinery; because throughout their shipping season, their products were subject to severe competition from neighboring nations, primarily Mexico and Cuba, particularly with respect to tomatoes.

The following quote is from a letter to Mr. J. S. Peters, Manager of the Florida Tomato Committee, from Senator Spessard L. Holland, dated June 3, 1969. Senator Holland was discussing some ideas concerning Section 8(e). "The provision is manifestly fair and is sometimes referred to as the golden rule amendment. It imposes no requirement on the imported commodity that is not also imposed on the domestic commodity. It provides for adequate notice so that foreign producers and importers will have ample opportunity to adjust their operation. It does not seek to exclude imports, but rather to make possible market regulations of equal benefit to domestic and foreign producers. Generally, the forces of competition compel producers to harvest and market everything that will sell for enough to cover harvesting costs, plus something in addition, no matter how little. By excluding the less desirable grades and sizes, a marketing order makes it possible for the producers, both foreign and domestic, to obtain better prices and a better total return." A copy of the entire letter is attached to this statement as Exhibit No. 1.

A controversy between the U.S.D.A. and the Florida Tomato Industry concerning the applicability of grade, size, quality and maturity regulations to imports has existed for many years. A letter from Washington, D.C. attorney, Joseph O. Parker, who recently retired from the International Trade Commission, to Mr. Joffre C. David, General Manager of the Florida Fruit & Vegetable Association, dated June 15, 1957, clearly points out the areas of disagreement. (A copy of this letter is attached to this statement as Exhibit No. 2.)

I would like to quote the following from that letter in which Mr. Parker is discussing Section 8(e).

"In the hearings on this amendment before the Senate Committee on Agriculture and Forestry the principal point made by the proponents of the legislation in demonstrating the need for, and the objective sought to be achieved by this legislation was the fact that Florida growers could not benefit from the Agricultural Marketing Agreement Act because imports from Mexico could not under existing law be subjected to like regulations.

From this legislative history and the express language of the statute there can be no doubt but that it was the intent of Congress to require imports to comply with any term or condition of a marketing order regulating grade, size, quality or maturity.

The contention has been made that the regulation is not applicable to imports because it is a "pack regulation" and, therefore, not a size regulation. Such a contention appears to us to be merely an exercise in semantics. It is not what a regulation may be called that is the determining factor. It is what the regulation does. The question and only question at issue is whether the order contains any terms or conditions regulating size. It is obvious that it does. In our opinion it is immaterial whether the regulation is described or called a "pack regulation" or by any other name or under what section of the statute it may have been promulgated, since the order manifestly regulates size and the regulation of size is necessary to the application of the order to Florida growers. Under such circumstances, section 8e makes those provisions applicable to imports.

Any attempt to construe the order as not relating to size and thereby avoiding its application to imports under section 8e would give a result contrary to the intent of the Congress and would be in derogation of the fundamental objective of the statute. The provisions of the law which were added by the Agricultural Act of 1954 were for the purpose of strengthening and making more effective to farmers the provisions of the Agricultural Marketing Agreement Act as a means of assisting them in establishing and maintaining orderly marketing conditions in an effort to avoid unreasonable fluctuations in supplies and prices. Although the Agrecultural Marketing Agreement Act was first enacted over

twenty years ago, its provisions, as was shown in the hearings on the bill, have not been of substantial benefit to Florida fruit and vegetable growers because marketing regulations imposed upon themselves in an effort to establish orderly marketing procedures could have no applicability to competitive imports. It was not until the adoption by the Congress of section 8e, thereby making applicable to imports any term or condition of a marketing order regulating grade, size. quality or maturity, that the growers of Florida could successfully utilize the provisions of the Act. The failure to follow the clear intent of Congress and the plain language of the statute on the part of the administrator would not only defeat the intent of Congress in enacting section 8e, but it would destroy the usefulness of the entire Agricultural Marketing Agreement Act to Florida growers and prevent the fundamental objective and purpose of the statute from being achieved. It is an elemental rule of construction that a statute should be construed so as to carry out the Congressional intent and purpose and to make the statute effective. To this end the statute should be given a construction which will best effect its purpose, rather than one which would defeat it.

Accordingly, it is our view that section 8e of the Agricultural Marketing Agreement Act requires that the provisions of the marketing order referred to above be made applicable to imports.

Regulations imposed on Florida handlers of fresh tomatoes under Marketing Order No. 966 prevent them from commingling different grades of tomatoes in a shipping container and also from commingling different sizes of tomatoes within a shipping container except for the sizes of large and larger. Both of these regulations are important and are designed to create orderly marketing of fresh tomatoes. Different sizes of tomatoes, such as small, medium or large, sell for different prices and the same is true with different grades of tomatoes, such as U.S. 1, 2 or 3.

I have attached Table One from the 1978-79 Annual Report of the Florida Tomato Committee as Exhibit No. 3. This table shows the 1978-79 Annual Summary Analysis of Shipments and Sales. Looking under 85% U.S. 1 or Better, you can see the average price for Extra Large and Larger was $8.88, for Large $8.12, Medium $6.22 and Small $4.41. The differences are $.76, $1.90 and $1.81 respectively, between the next corresponding size. The same holds true when you compare 85% U.S. 1 or Better with U.S. 2 and U.S. 3.

Because of these variations in price for different grades and sizes, regulations are imposed on Florida handlers requiring them to pack tomatoes with only one grade in the container and only one size in the container except for large and larger. This is also where the controversy has been between the U.S.D.A. and the Florida Tomato Industry. The U.S.D.A. contends that prohibiting the commingling of grades or sizes within a shipping container constitutes a pack regulation and not a grade or size regulation.

Due to this interpretation, imports from Mexico are only inspected to see if they meet the minimum U.S. No. 3 grade and are larger than 2 2/32 inches in diameter, the minimum size and grade that can be offered for sale under the marketing order. Mexico is the main competition for Florida tomatoes, supplying from 40 to 60 percent of the tomatoes consumed in the United States during the months of December-June each year. They commingle size and grade in the containers they export to the United States which seriously disrupts the orderly marketing process. Exhibit No. 3 shows that tomatoes are sold by grade and size. A buyer in Chicago, for instance, is being offered tomatoes from Florida and Mexico, but they are different products due to the commingling.

Due to the abundance of cheap labor and the confusion created by commingling, Mexican imports usually sell for less money per package than comparable packages from Florida. Mexican producers can flood the United States' market with tomatoes at prices that won't even return the costs of production in Florida. During period of heavy supply, Mexican imports are frequently consigned to handlers throughout the United States, which again create havoc with the orderly marketing process. It is not uncommon to have Mexican tomatoes offered for sale in Florida during our peak season at prices cheaper than Florida tomatoes.

Numerous meetings have been held with representatives from the U.S.D.A. in an effort to stop the commingling of sizes and grades in Mexican imports. They continually respond by saying this constitutes pack regulations and not grade and size regulations and furthermore state that pack regulations cannot be imposed under Section 8(e) of the Agricultural Marketing Agreement Act of 1937, as amended.

The most recent meeting on this subject was held in Senator Lawton Chiles' office in Washington, D.C. on January 22, 1974. Representatives from the Secretary of Agriculture's office, the U.S.D.A.–A.M.S., the Federal-State Inspection Service, the Florida Department of Agriculture and Consumer Services, the Florida Tomato Committee, the Florida Fruit & Vegetable Association and the Tomato Division of the United Fresh Fruit & Vegetable Association discussed the problem with Senator Chiles.

The U.S.D.A. stated that there were only two ways to solve the problem. The first solution was for a representative group of Florida tomato shippers to enter suit against the Secretary of Agriculture of the United States and let the courts decide if commingling of sizes and grades in a container is covered under Section 8(e) as a grade and size regulation or if commingling of grades and sizes in a container constitutes a pack regulation that is not covered under Section 8(e).

The other alternative solution offered was for the Florida Tomato Industry to seek an amendment to Section 8(e) of the Agricultural Marketing Agreement Act of 1937, as amended, to include pack regulations. A meeting of the Florida Tomato Industry was held in Belle Glade, Florida, on February 20, 1974, and the two alternative solutions to the problem were discussed at length. Although it was generally agreed that the suit could be won, it was unanimously agreed that efforts should be made to amend Section 8(e) to include pack regulations for tomatoes. This simple amendment would solve the problem once and for all and bring about orderly marketing for the tomato industry.

The U.S.D.A. assisted the Florida Tomato Industry in drafting an amendment that would solve the problem. This amendment was introduced by Senator Chiles as S. 3824 on July 29, 1974. Subsequently, it was again introduced by Senator Chiles as S. 2440 on October 1, 1975, and passed the Senate. Congress adjourned without taking any action in the House during that session.

The amendment was again introduced in the 95th Congress by Senator Chiles as S. 91 and by Congressman L. A. Bafalis as H.R. 744. S. 91 was approved by the Senate in July 1977, and Congressman Dante Fascell offered identical language as an amendment to the 1977 Farm Bill in the House. Although this amendment passed the House, it was stricken from the Farm Bill in Conference Committee due to heavy lobbying efforts by Congressional representatives from Arizona, South Dakota and Texas.

Some of the arguments presented to the Conference Committee are simply not factual. It was reported that most Mexican shipping containers are hand-made wooden boxes. The Market News Service in Nogales, Arizona, reports that 75 percent of the Mexican tomato crossings are in laminated wood and carboard boxes (mostly cardboard) which are machine-built. The remainder are various types of fiberboard or cardboard and this percentage is increasing each year due to the shortage and high cost of wood in Mexico. One importer of Mexican tomatoes in Florida who used in excess of 100 carlots of Mexican tomatoes last spring stated that he did not receive a single car of tomatoes packed in hand-made wooden boxes. Approximately 75 percent of his shipments were in the laminated wood container described above and the balance in cardboard.

Research tests made in recent years with Mexican cartons proved that the proper sizes could be packed in a carton without commingling. This amendment would not change the Mexican's mode of operation. It does not in any way control the type of container. It only controls the contents of the container. A statement was made that it would put thousands of Mexican workers out of jobs. This is totally untrue.

The U.S.D.A. who has opposed this legislation in the past stated in the Senate Agricultural Committee Hearings that stopping commingling had been good for the Florida producers. This being the case, I think it is safe to assume that it would also benefit the Mexican producer. It certainly wouldn't encourage unemployment in Mexico. If Section 8(e) is not amended to include pack regulations, it could encourage unemployment in Florida due to the number of domestic producers being forced out of business.

It was reported that this amendment might encourage the smuggling of drugs into the United States. Actually, it would do just the opposite. It would require a more thorough inspection at the border and, hence, discourage drug trafficking.

It would not create a hardship for other states in the United States as stated in the Conference Committee since Florida and Mexico are the prime suppliers

of tomatoes at the time these regulations are in effect. This is documented in Exhibit No. 4 which shows the supply sources of fresh tomatoes by months.

I again repeat, tomatoes are sold by size and grade. Commingling of different sizes and different grades does affect the quality of the tomatoes offered for sale and, consequently, the price. It also creates disorderly marketing conditions since buyers do not really know what they are purchasing. It would be the same as mixing all sizes of eggs together in a single carton.

Statistics on United States imports of Fresh Tomatoes for the past several years compiled by U.S.D.A., F.A.S., show imports from several countries. They also show that about 99 percent of these imports are from Mexico. Additionally, the imports from the Bahamas which vary from .3% to .7% were brought into Florida in bulk and, when packed, met all of the Florida requirements. The remaining amounts are very small each year with most of them coming in when Florida is not in production; hence, no regulations are in effect at that time.

In the past, the U.S.D.A. has contended that a requirement that different sizes of tomatoes be packed in separate containers might be useful for standardization purposes in the domestic industry while being impractical for foreign-grown tomatoes because of differences in mode of operation. Ninety-five percent of the fresh tomatoes sold in the United States from December to June each year are produced in Florida or imported from Mexico. Representatives of the Florida Tomato Committee visit the Mexican production areas at least once each season and can attest that most of the varieties produced in Mexico are the same as the ones grown in Florida, and the Mexican packing facilities are certainly as modern as those found anywhere in Florida. I cannot comprehend how standardization of the domestic industry would be useful but would be impractical for foreign-grown tomatoes when the foreign imports represent 40 to 60 percent of the total volume available in the United States during Florida's production season.

Imports from Mexico cross the border at Nogales, Arizona, with only spot inspection to check for compliance although this is not authorized in Florida. Although Mexican producers use many pesticides and other chemicals on their crops that are not approved for use in the United States by EPA, they cross the border with virtually no checks for pesticide residues. The latest incident is documented in Exhibit No. 5. It is interesting to note that FDA inspectors discovered traces of the chemical February 20, and because they could not identify it, they did not reject any loads. He further says, "Unfortunately, our policy is not to keep a shipment out until we can identify the pesticide."

They commingle grades and sizes freely which creates havoc with orderly marketing. The Mexican producer enjoys cheap labor, is not burdened with numerous governmental rules and regulations, and yet pays only a very small import duty when he ships his tomatoes to the United States.

In former hearings, this has been called a non-tariff barrier. We question that this is a non-tariff barrier since both the domestic and foreign shipper would comply with these regulations. The Florida Tomato Industry is not requesting that Mexican tomatoes be placed in containers identical to ours. They can pack them in burlap bags if they want to. We are seeking to have the contents of any shipping carton packed uniformly by size and grade since these items definitely affect the price of tomatoes and commingling of sizes and grades seriously undermines the concept of orderly marketing.

Speaking of non-tariff barriers, I'm sure that this Committee is aware of the fact that tomatoes produced in the United States cannot be shipped to Mexico under any conditions when Mexico is in production because of their restrictive permit procedures. In fact, their permit system practically prohibits the exportation of tomatoes produced in the United States to Mexico at any time of the year.

The amendment to Section 8(e) of the Agricultural Marketing Agreement Act of 1937, as amended, as contained in H.R. 116 would standardize the grades and sizes of tomatoes offered for sale in the United States during the period of time that they are controlled by a federal marketing order. It will not eliminate imports and will not place restrictions on imports that are more restrictive than those applied to domestic shipments.

Due to changes in personnel over the past two years, I have been informed that the U.S.D.A. will now support this amendment. This information was obtained after Florida growers met with Secretary of Agriculture Bergland and his staff to discuss ways the U.S.D.A. could help solve some of their problems.

The Florida Tomato Industry respectfully urges you to approve this amendment to Section 8(e) so that the original intent of the "golden rule" amendment can be applied. This will provide for orderly marketing and will benefit the Florida producer, the Mexican producer, the United States importer, and most of all, the United States consumer.

EXHIBIT No. 1

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C., June 3, 1969.

Mr. J. S. PETERS,
Manager, Florida Tomato Committee,
Orlando, Fla.

DEAR MR. PETERS: This responds to your letter of May 26 suggesting that I set down some ideas concerning section 8e of the Agricultural Adjustment Act (as reenacted by the Agricultural Marketing Act of 1937) for inclusion in your Annual Report.

Section 8e is applicable to tomatoes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates (other than for processing), and eggplants. It subjects the imported commodity to the same requirements as to grade, size, quality, and maturity as the domestic commodity is subject to under a marketing order. Where the domestic commodity is subject to different marketing orders in different areas, the imported commodity must comply with the order applicable to that area with which it most directly competes. Whenever variations in characteristics between the domestic and imported commodity are such as to make it impracticable to apply the same restrictions, equivalent or comparable restrictions are imposed upon the imported commodity.

Section 8e has been very helpful in achieving its intended objective. It was enacted on August 28, 1954, to meet problems of particular importance to Florida and particularly with respect to tomatoes. In fact, when the amendment was first proposed to the Committee it was proposed by a Florida organization to apply only to tomatoes and certain other perishable commodities "produced in the State of Florida". As you point out in your letter it has been of inestimable value this year for the Florida tomato industry.

The Florida fruit and vegetable industry had been studying marketing orders for some years prior to 1954, seeking ways to improve its operations. However, it had not been able to determine how it could make use of the marketing order machinery, because throughout its shipping season its products were subject to severe competition from neighboring nations, primarily Mexico and Cuba, particularly with respect to tomatoes. As the witness pointed out:

We have had meetings for years, talking about a marketing agreement. But when we find that we shipped eight or ten thousand cars of tomatoes and at the same time and period, day for day, Mexico shipped six, eight, or seven thousand cars of the same commodity, some days shipping even more than we do, you just cannot make a marketing agreement work in Florida.

The Committee adopted this provision on my motion and it was passed by the Senate. As reported to the Senate, it covered tomatoes, avocados, limes, and grapefruit. Irish potatoes were added on the Senate floor. The House had already passed a similar provision covering additional commodities and in conference green peppers, cucumbers and eggplants were added. Mangoes were added as a result of my amendment to H.R. 9756 (Public Law 754, 83rd Congress) on August 31, 1954; and oranges, onions, walnuts, and dates (other than for processing) were added by the Agricultural Act of 1961. I have been seeking for some time to have the law extended to tangerines, and I have no doubt that it will be extended to other commodities from time to time.

The provision is manifestly fair and is sometimes referred to as the golden rule amendment. It imposes no requirement on the imported commodity that is not also imposed on the domestic commodity. It provides for adequate notice so that foreign producers and importers will have ample opportunity to adjust their operations. It does not seek to exclude imports, but rather to make possible market regulation of equal benefit to domestic and foreign producers. Generally, the forces of competition compel producers to harvest and market everything

that will sell for enough to cover harvesting costs, plus something in addition, no matter how little. By excluding the less desirable grades and sizes, a marketing order makes it possible for the producers, both foreign and domestic, to obtain better prices and a better total return.

That the provision is not intended to exclude the foreign commodity is evidenced by the fact that tomato imports from Mexico have almost quadrupled in the last ten years. For this season 13,344 carloads of Mexican tomatoes had crossed into the United States through May 11, 1969, compared with 9,654 carloads during the previous season through May 11, 1968.

Administration of section 8e is almost automatic. It is effective whenever a domestic order is effective. It is enforced through customs, commodities being admitted only if they bear an inspection certificate showing that they meet the requirements of the order. Problems do arise with foreign producers and exporters, usually in the initial period of an order, but these are generally worked out in a satisfactory manner. Before section 8e was proposed to Congress, members of the Florida industry had discussed it with members of the Cuban industry, and from those discussions and prior discussions of marketing orders generally with members of the Mexican industry, believed that both the Cuban and Mexican growers would favor section 8e. During the past season representatives of the Departments of Agriculture and State have met with representatives of the Mexican Government and the Mexican tomato industry on several occasions. All agreed that regulation of tomato marketings was economically necessary, although there were some differences as to the form the regulation should take. Experience under the order has showed that prices of Mexican as well as Florida tomatoes have benefitted.

Yours faithfully,

SPESSARD L. HOLLAND.

EXHIBIT No. 2

PACE AND PARKER,
Washington, D.C., January 15, 1957.

MR. JOFFRE C. DAVID,
General Manager, Florida Fruit & Vegetable Association,
Orlando, Fla.

DEAR MR. DAVID: You have asked our opinion as to whether certain provisions of the regulations relating to size (section 945.302(b)(1); 21 F.R. 8534) issued under Marketing Agreement No. 125 and Order No. 45, regulating the handling to tomatoes grown in Florida, are applicable to imports. These regulations provide in part as follows (italic supplied):

During the period from November 12, 1956 through June 30, 1957, the following regulations shall be effective with respect to tomatoes grown in the production areas . . .:

(1) No person shall handle for shipment outside the production area any mature green tomatoes 1⅞ inches *diameter or larger:*

(i) Unless they are packed within one of the following *ranges of diameter* (expressed in terms of minimum and maximum):

Size arrangements	*Diameter (inches)*
7×8	1⅞ to 2⅛, inclusive.
7×7	Over 2⅛ to 2$^{9}/_{32}$ inclusive.
6×7	Over 2$^{9}/_{32}$ to 2$^{17}/_{32}$ inclusive.

(ii) Such mature green tomatoes shall be packed separately for each *size range;*

(iii) To allow for variations incident to proper *sizing* not more than a total of ten (10) percent, by count, of the mature green tomatoes in any lot may be *smaller* than the specified minimum *diameter* or *larger* than the *specified maximum diameter;*

(iv) Tomatoes smaller than 1 7/8 inches diameter and larger than 2 17/32 inches diameter may be shipped without regard to the aforesaid pack requirements * * *"

Section 401 of Public Law 690, 83d Congress, amended the Agricultural Marketing Agreement Act of 1937, (7 U.S.C. 601 ff.), by adding a new section 8e, the pertinent provisions of which read as follows (understanding supplied):

Notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8e of this Act contains any

terms or conditions regulating the grade, size, quality, or maturity of tomatoes, avocados, limes, grapefruit, green peppers, Irish potatoes, cucumbers, or eggplants produced in the United States the importation into the United States of any such commodity during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder * * *.

The marketing order set forth above clearly contains terms and conditions regulating the size of mature green tomatoes shipped from Florida. The order expressly establishes and standardizes sizes of tomatoes in terms of inches. It also establishes size tolerances. It further prohibits the mixing of sizes.

The provisions of section 8e of the Agricultural Marketing Agreement Act set forth above extend and make applicable to imports in clear and unambiguous language any term or condition of a marketing order regulating the size of tomatoes. It is a well settled rule of statutory construction that where the legislative body distinctly states its design, no place is left for construction. Here, the purpose of the statute is obvious on its face. Under such circumstances there is no need to resort to extraneous aids to construction. All that is needed to ascertain the intent of Congress in enacting section 8e is to read the statute. The statute is so clear that it is difficult to conceive how the Congress could have made it more plain.

Even though it is not necessary to make further inquiry to determine the object of the statute, we have examined the legislative history of this provision. Such history further supports the intent of Congress which is so manifest from the language of the statute itself and shows very clearly that the Congress intended to say what it said. The respective committees of the Senate and the House having jurisdiction of the legislation in explaining the amendment apparently found the language so clear that in their reports the committees simply paraphrased the language of the statute. In its report the Senate Committee on Agriculture and Forestry state:

"Imports of tomatoes * * * would be prohibited if they did not comply with grade, size, quality and maturity provisions of all marketing orders applicable to the same commodities produced in the United States" (Senate Report No. 1810, 83d Congress, p 8).

The Committee on Agriculture of the House stated:

It provides that when a marketing order is in effect containing any terms regulating the grade, size, quality or maturity of the designated fresh fruits and vegetables, such fruits and vegetables imported into the United States must comply with the provisions affecting these fruits and vegetables produced under the marketing order in the United States (House Report No. 1927, 83d Congress, p. 29).

In the hearings on this amendment before the Senate Committee on Agriculture and Forestry the principal point made by the proponents of the legislation in demonstrating the need for, and the objective sought to be achieved by this legislation was the fact that Florida growers could not benefit from the Agricultural Marketing Agreement Act because imports from Mexico could not under existing law be subjected to like regulation.

From this legislative history and the express language of the statute there can be no doubt but that it was the intent of Congress to require imports to comply with any term or condition of a marketing order regulating grade, size, quality or maturity.

The contention has been made that the regulation is not applicable to imports because it is a "pack regulation" and, therefore, not a size regulation. Such a contention appears to us to be merely an exercise in semantics. It is not what a regulation may be called that is the determining factor. It is what the regulation does. The question and only question at issue is whether the order contains any terms or conditions regulating size. It is obvious that it does. In our opinion it is immaterial whether the regulation is described or called a "pack regulation" or by any other name or under what section of the statute it may have been promulgated, since the order manifestly regulates sizes and the regulation of size is necessary to the application of the order to Florida growers. Under such circumstances section 8e makes those provisions applicable to imports.

Any attempt to construe the order as not relating to size and thereby avoiding its application to imports under section 8e would give a result contrary to the intent of the Congress and would be in derogation of the fundamental objective of

the statute. The provisions of the law which were added by the Agricultural Act of 1954 were for the purpose of strengthening and making more effective to farmers the provisions of the Agricultural Marketing Agreement Act as a means of assisting them in establishing and maintaining orderly marketing conditions in an effort to avoid unreasonable fluctuations in supplies and prices. Although the Agricultural Marketing Agreement Act was first enacted over twenty years ago, its provisions, as was shown in the hearings on the bill, have not been of substantial benefit to Florida fruit and vegetable growers because marketing regulations imposed upon themselves in an effort to establish orderly marketing procedures could have no applicability to competitive imports. It was not until the adoption by the Congress of section 8e, thereby making applicable to imports any term or condition of a marketing order regulating grade, size, quality, or maturity, that the growers of Florida could successfully utilize the provisions of the Act. The failure to follow the clear intent of Congress and the plain language of the statute on the part of the administrator would not only defeat the intent of Congress in enacting section 8e, but it would destroy the usefulness of the entire Agricultural Marketing Agreement Act to Florida growers and prevent the fundamental objective and purpose of the statute from being achieved. It is an elemental rule of construction that a statute should be construed so as to carry out the Congressional intent and purpose and to make the statute effective. To this end the statute should be given a construction which will best effect its purpose, rather than one which would defeat it.

Accordingly, it is our view that section 8e of the Agricultural Marketing Agreement Act requires that the provisions of the marketing order referred to above be made applicable to imports.

Sincerely yours,

JOSEPH O. PARKER.

EXHIBIT NO. 3

TABLE 1.—1978–79 ANNUAL SUMMARY, ANALYSIS OF SHIPMENTS AND SALES

Grade and size	Green—30 lb equivalent					Ripes—20 lb equivalent				
	Containers	Percent	Average price	Percent	Sales	Containers	Percent	Average price	Percent	Sales
85 pct U.S. 1 or better:										
Extra large and larger	2,298,225	8.8	$8.88	11.7	$20,426,272.59	7,337	0.1	$6.55	0.2	$52,254.10
Large	5,274,950	20.1	8.12	24.6	42,854,229.05	20,913	.4	6.22	.5	130,269.45
Medium	4,579,622	17.4	6.22	16.4	28,525,238.25	3,038	.1	4.17	.1	12,683.75
Small	1,438,749	5.5	4.41	3.6	6,358,795.00	367	0	3.02	0	1,111.20
Total	13,591,546	51.8	7.22	56.3	98,165,534.89	32,285	.6	6.08	.8	196,318.50
U.S. combination:										
Extra large or larger	859,878	6.3	8.73	4.3	7,514,027.77	825,265	14.2	6.03	19.4	4,976,835.85
Large	2,188,684	8.4	8.04	10.1	17,605,761.10	1,297,189	22.4	5.74	29.0	7,455,019.90
Medium	2,258,829	8.6	5.89	7.6	13,314,659.75	1,084,315	18.7	4.36	18.4	4,729,414.85
Small	745,501	2.8	3.92	1.7	2,927,187.25	271,629	4.7	3.15	3.3	857,529.80
Total	6,052,892	23.1	6.83	23.7	41,361,635.87	3,478,398	60.0	5.18	70.1	18,018,800.40
U.S. 2:										
Extra large or larger	1,085,332	4.1	7.05	4.4	7,658,150.70	45,169	.8	4.66	.8	210,525.10
Large	942,849	3.6	5.99	3.3	5,656,030.40	91,080	1.6	3.79	1.3	345,908.70
Medium	1,147,326	4.4	4.59	3.0	5,274,045.00	25,560	.4	3.12	.3	79,962.90
Small	306,560	1.2	3.33	.6	1,021,326.50	5,111	.1	2.27	.1	11,641.25
Total	3,482,067	13.3	5.63	11.3	19,609,552.60	166,920	2.9	3.88	2.5	648,037.95
U.S. 3:										
Extra large and larger	1,206,874	4.6	5.72	4.0	6,913,022.55	934,264	16.1	3.57	13.0	3,342,581.30
Large	756,684	2.9	5.36	2.3	4,060,994.76	629,491	10.9	3.37	8.3	2,121,751.15
Medium	900,425	3.4	3.83	2.0	3,456,628.50	470,915	8.1	2.58	4.7	1,219,087.60
Small	242,982	.9	2.67	.4	648,798.25	80,945	1.4	1.86	.6	150,579.55
Total	3,106,965	11.8	4.85	8.7	15,079,444.06	2,115,615	36.5	3.23	26.6	6,833,999.60
Total:										
Extra large and larger	5,450,309	20.8	7.79	24.4	42,511,473.61	1,812,665	31.3	4.73	33.4	8,582,196.35
Large	9,163,167	34.9	7.65	40.3	70,177,015.31	2,038,673	35.2	4.93	39.1	10,052,949.20
Medium	8,886,202	33.9	5.69	29.0	50,571,571.50	1,583,828	27.3	3.81	23.5	6,041,149.10
Small	2,733,792	10.4	4.00	6.3	10,956,107.00	358,052	6.2	2.85	4.0	1,020,861.80
Total	26,233,470	100.0	6.64	100.0	174,216,167.42	5,793,218	100.0	4.43	100.0	25,697,156.45

Note: Total sales $199,913,323.87. Total 30 lb equivalents equals 30,095,616. Average price per 30 lb equivalent $6.64.

EXHIBIT No. 4

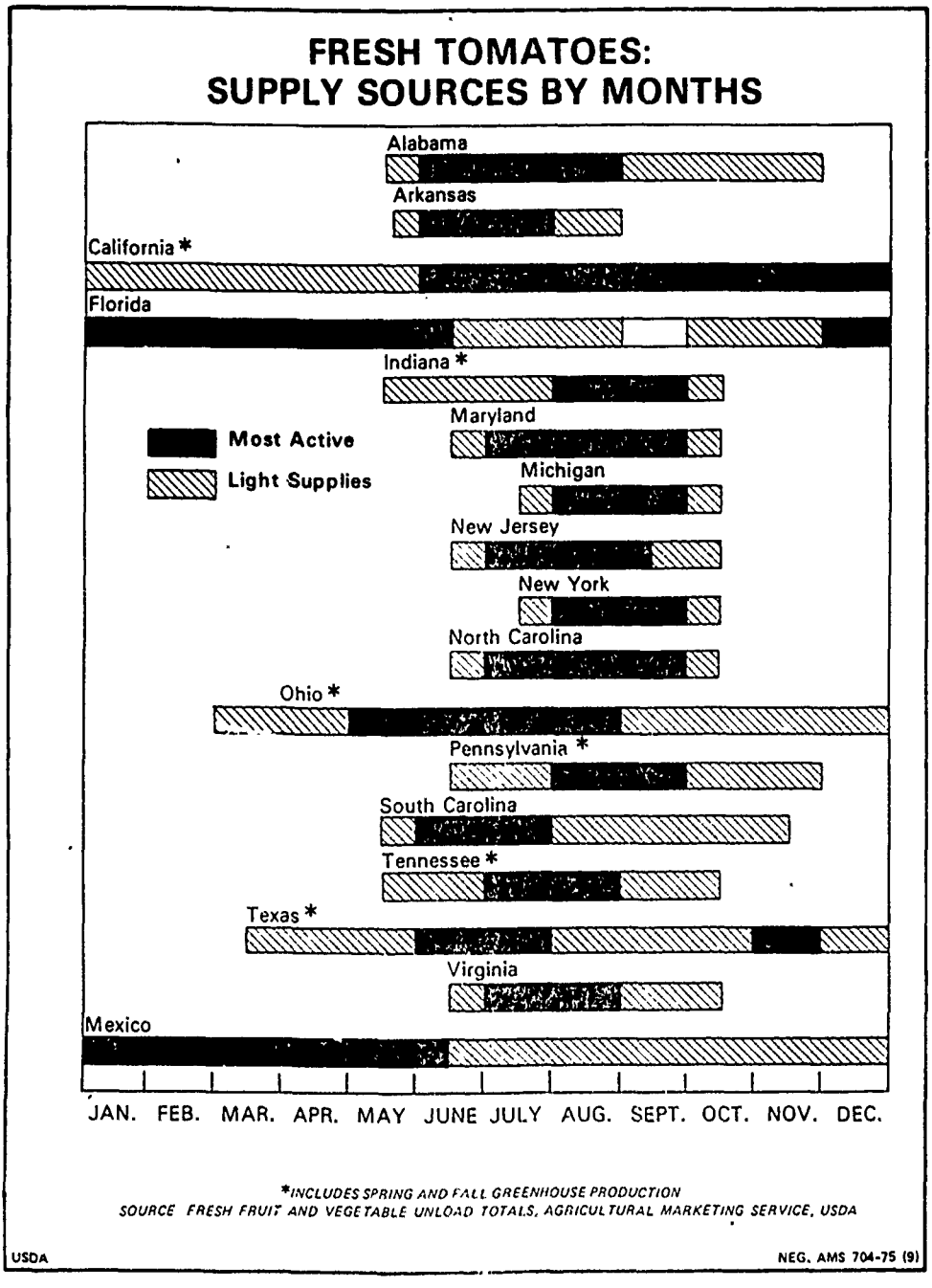


EXHIBIT No. 5

[From the Packer, Mar. 8, 1980]

CHEMICAL TEST DELAYS TRAFFIC OUT OF NOGALES

(By Tim Linden)

NOGALES, ARIZ.—An estimated 100 loads of produce, mostly tomatoes, were held up 48 hours by the U.S. Food and Drug Administration, here, early this week (March 3–8), as officials checked for excessive levels of pesticide residues.

By Thursday morning, March 6, almost all of the produce had been released,

but FDA officials were warning that more loads would be held up until the pesticide problem is cleared. Lloyd Lehrer, FDA compliance officer, Los Angeles, said, "There have been more problems this year than in the past several years combined."

Since the beginning of the season, Lehrer said, random samples of the produce have revealed the use of illegal pesticide and new products that have not been cleared, as well as excessive use of registered chemicals.

The three problem chemicals thus far have been Daconil, Triazophos and Chlorothiothos. All three are used on bell peppers, and the third chemical, used primarily on tomatoes, is a new product being sold in Mexico as Celathion. Celathion is the chemical chiefly responsible for the holding up of loads in Nogales.

Through their random sample procedures, FDA inspectors discovered traces of this chemical Feb. 20, and because they could not identify it, they did not reject any loads.

"Unfortunately, our policy is not to keep a shipment out until we can identify the pesticide," Lehrer said.

On reports, the chemical was just listed as unknown and did not keep the produce out of the United States. By late last week (Feb. 25-March 1), however, the chemical had been identified, but because it had not been registered for use, zero-tolerance guidelines were used. Under FDA policies, zero tolerance is defined as less than .01 parts per million.

Using this residue level, Lehrer said, excessive levels were found on 12 loads last week. The loads had to be returned to Mexico or destroyed.

With data in hand on certain Mexican grower-shippers, the FDA began selectively sampling tomatoes and peppers and holding the merchandise of suspect grower-shippers. The shippers, however, were aware of the problem, and few if any shipped to Nogalez produce that had been sprayed with illegal chemicals.

"We did find residue on some loads, but it was below the actionable level," Lehrer said. "But we will continue to take selective samples and hold shipments until we have enough data to conclude that particular shippers no longer have a problem."

In addition, Lehrer said, random samples will continue to be taken on all merchandise. An FDA official in Nogales said approximately 10 random samples of 20 pounds each are taken each day and airmailed to the FDA's laboratory in Los Angeles for testing.

Mr. VANIK. Mr. Bafalis?

Mr. BAFALIS. No questions.

Mr. VANIK. Mr. Schulze?

Mr. SCHULZE. No questions.

Mr. VANIK. Thank you very much.

Next is the West Mexico Vegetable Distributors Association, Mr. Mike Masaoka and Patrick Macrory.

Your entire statement, Mr. Masaoka, will be placed in the record. You may read or excerpt.

STATEMENT OF MIKE M. MASAOKA, WASHINGTON REPRESENTATIVE, WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION

Mr. MASAOKA. Thank you, Mr. Chairman. My name is Mike Masaoka and today I am testifying on behalf of the West Mexico Vegetable Distributors Association, Nogales, Ariz., which is composed of approximately 45 American companies which import approximately 90 percent of all the tomatoes that come in from West Mexico.

The particular bill, H.R. 116 which is the subject of discussion today, in our judgment is a packaging bill and not a revenue bill. As a matter of fact, if the legislative history of this legislation is looked at, when the Senate twice considered it previously and passed it, it was not considered by a revenue committee.

On the surface, the bill H.R. 116 appears to be very simple and harmless. On the contrary, we find that H.R. 116 is a bill that addresses a complex issue and has a long history of controversy.

H.R. 116 does involve international trade, but it is not a bill that deals with tariffs or revenues. H.R. 116 is a bill that regulates the packaging of imported goods and does not rightly belong, we believe, before this subcommittee. We respectfully urge, therefore, that this subcommittee not consider and not report out H.R. 116 for the following fundamental reasons.

The bill does not deal with tariffs and revenues. The bill sets a packaging standard for imported tomatoes. If the measure is made into law, the packaging standards would be set not at the Federal level but by a group of regional tomato growers.

American consumers would be adversely affected by higher prices and lower quality tomatoes. And finally, American consumers would not be protected against any deception or danger.

On the other hand, a new nontariff barrier would be created and our international trade partners would be free to retaliate against our products.

Mr. Chairman, on page 6 there is a gross error in our particular statement which I would like to have corrected for the record.

The last sentence in the top paragraph should read as follows——

Mr. JONES. What page is this?

Mr. MASAOKA. Page 6. "There is no"—the word "no" is left out and should be there because it is very important. Corrected, it should read, "There is no misleading or deception of consumers with present packaging methods."

Mr. Chairman, if I may, I would like to show two pictures of the hearings which were held before Congressman Richmond's committee 2 years ago. They illustrate the California pack which is for vine-ripened tomatoes. These, you will notice, are only two layers deep, so the consumer can see them much more clearly than the Florida pack which is simply, by weight, 30-pound crates, into which tomatoes are dumped at approximately the same size.

On the other hand, the California pack which Mexico uses and which almost every other State uses except southern Florida, Mr. Chairman—northern Florida uses the California pack, not the so-called Florida loose pack, because the southern Florida green tomatoes are tougher and are gassed to show their pinkness or ripeness.

Incidentally, if it is proper to demand country of origin labeling on tomatoes, I would suggest they also ought to say whether tomatoes are gassed to ripen as they mature green or are ripened on the vine.

Aside from that, Mr. Chairman, the vine-ripened tomatoes from California and from Mexico are soft and perishable, so they have to be hand placed into this particular crate, as you can see, according to their size, 7 by 7, the smaller size, 7 by 6, and 5 by 6, according to size.

All in one pack are approximately the same size. One or two may have a slightly different size simply to hold the pack together. This, we think, is a fundamental distinction between the so-called west Mexico-California pack and the Florida lug.

Florida sells their tomatoes by weight in 20- and 30-pound boxes. California and Mexico sell theirs by this loose pack, which accounts—

I am sorry—California uses a solid pack because in this way tomatoes are better protected against bruising and arrive in better condition.

Now, as far as the ultimate consumer is concerned, the average housewife does not buy a crate of tomatoes. They go to the store and pick the tomatoes they want by size, color, and price. So the so-called packaging is not a matter of deception. As a matter of fact, Mr. Macrory will point out that some retailers before they buy ask the wholesale distributors to change from the Florida lug to the California pack.

In other words, Mr. Chairman, the Florida package was designed to take care of the major variety of tomatoes grown and packed in southern Florida and not in most of the United States. Most of the United States, like California, Texas, even Ohio, pack theirs in the California crate.

So if there is any deception at all, it would seem to favor—well, you judge for yourself.

Now, there is also, Mr. Chairman, two recent facts which I will have sent up to you on recent marketing orders. Now, these you will note, are from the Globe and Mail in Toronto, Canada, for Tuesday, April 15.

They have tomatoes here, and you will notice that they have four types of tomatoes—or rather three types. They have the greenhouse tomatoes to which Mr. Vanik recently alluded, which are sold in 8-pound lots.

Then there are Florida tomatoes which are sold in 30-pound cartons and Mexican tomatoes that are sold by size designation. And according to the U.S. Department of Agriculture, Market News, for Friday, April 11, you will find that the Mexican size and the Florida sizes are described generally as follows: Florida tomatoes are sold by weight designation; 20-pound cartons are used for mature green tomatoes. Those are cartons filled with hard, green tomatoes and 20 pounds is indicated. Very little handling is needed except perhaps just a few tomatoes for size. Generally this is used for the larger size.

Then we have the 30-pound cartons also for mature greens. The cartons are filled with 30 pounds of green tomatoes, generally smaller sizes, but possibly to get 30 pounds of mature greens into a single box.

Now, Mexico sells their tomatoes by sizes. They come close to 25 or 30 pounds, but are sold by size designation, such as 4 by 5, in two-layer flats; they weigh about 20 pounds. Three-layer lugs which average about 30 pounds are for the smaller sizes.

So that the actual fact is that as far as most Americans are concerned, it is the west Mexico, California, Texas type of packaging that is more standard and more uniform than the self-serving type which was developed by a special marketing order in one area of the United States only, southern Florida, and by operation of law it is extended to all imports that happen to come in at the same time.

Mexican tomatoes happen to come in at about the same time as those grown in southern Florida; therefore, this is competition in tomatoes, but the variety is different. The same type of tomato as brought in, in the vine-ripened stage from Mexico is packed exactly as it is in California during other seasons—in Texas, in Arizona, and elsewhere.

And I think it is only in Florida where they use this so-called loose pack. Now, Mr. Chairman, I have—I would like to point out that Mr. Macrory will talk to the matter raised by Congressman Bafalis that fewer growers today are engaged in growing tomatoes in southern Florida than before. As I recall the statistics, there may be fewer growers—and we have the data—but they are now producing more.

So the total amount of tomatoes produced is equal to or greater than it was when they had the larger number of growers.

All of this, Mr. Chairman, was brought out in considerable detail in the hearings before your colleague, Mr. Richmond's committee.

And for the record, I would like to submit the testimony from those hearings of October 4, 1977.

Now, once again, if I may briefly summarize, H.R. 116 is a bill which deals with packaging and not with revenue. Therefore, this may not be the proper group, the proper committee, to study this. It was previously referred to the Agriculture Committee and Mr. Richmond's subcommittee turned it down. In the Senate when it was passed, it never had a hearing, and it was never considered by the Finance Committee.

So all of the facts would indicate that this—as the U.S. Government itself pointed out in the testimony 2 years ago in written letters which are part of the record—the Department of State, the Office of the Special Trade Representative, the Department of Agriculture, and the Department of Commerce all declared a similar bill to be a packaging bill and addressed it as such.

Therefore, Mr. Chairman, we would respectfully urge the subcommittee to take another look at the matter of jurisdiction. Thank you.

[The prepared statement and attachment follow:]

STATEMENT OF THE WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION

SUMMARY

In compliance with your directions in announcing hearings on certain trade and tariff bills, the following information is submitted:

Association members include Ace Asparagus Sales, A-Home Produce Distributors, Inc., Amigo Produce Company, Inc., Arizona Produce, Azteca Produce Company, Inc., Bonaterra, Inc., Bravo Distributors, Inc., Burnand and Company, Inc., C A B Produce Company, Crestview Sales, Inc., Culiacan Produce, Inc., Deardorff-Jackson Company, Del Valle Produce, Inc.

Disa Produce, Inc., Engelbretson-Grupe Company, Farmers Best, Inc., Farmers Sales, Inc., Frank's Distributing Inc., G.A.C. Produce Company, Al Harrison Company, Ice Produce Distributors, Inc., Joyce Produce Company, Inc., Kelly Produce Inc., Kitty's Vegetable Distributors, Inc., A. Levy and J. Zentner Company, Lisa Inc., Melrose Produce Distributors, Inc., Mendelson-Zeller Company, Inc., Meyer Tomatoes.

Mission Fruit and Vegetable Distributors, Inc., Mizokami Brothers of Arizona, Inc., Monte Produce, Inc., Omega Produce Company, Inc., R and H Produce Company, Rene Produce Distributors, Inc., Rio Vista Ltd., Ritelo Produce, Inc., Rolitax, Inc., S and H Packing and Sales Company, Inc., Sandia Distributors, San Rafael Produce, Inc., Shipley Sales Service, Sigma Produce Company, Inc.

West Mexico Vegetable Distributors Association is opposed to H.R. 116, a bill that would permit the tomato growers of Southern Florida to set the packaging standard for imported fresh winter tomatoes from Mexico.

H.R. 116 should be tabled.

Discussion of legislation.

Bill does not deal with tariffs and revenues. The bill sets a packaging standard.

Regional growers would set standards for international trade practices.

American consumers would be adversely affected by higher costs and lower quality produce.

American consumers would not receive any additional consumer protection through H.R. 116.

A new nontariff trade barrier would be created through H.R. 116. Retaliation against U.S. exports would be invited.

STATEMENT

My name is Mike M. Masaoka. I am testifying today on behalf of West Mexico Vegetable Distributors Association, of Nogales, Arizona which is composed of approximately 45 American companies. Member companies of the Association distribute and sell fresh winter produce from Mexico. More than 90 percent of all tomatoes imported from Mexico are handled by the members of this Association.

H.R. 116, a bill introduced by Mr. L. A. Bafalis of Florida would amend "section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes."

On the surface, H.R. 116 appears to be a very simple and harmless bill. On the contrary, H.R. 116 is a bill that addresses a complex issue and has a prior history of controversy and conflict.

H.R. 116 does involve international trade, but it is not a bill that deals with tariffs or revenues. H.R. 116 is a bill that regulates the packaging of imported goods and does not rightly belong, we believe, before this Subcommittee. We respectfully urge, therefore, that this Subcommittee not consider and not report out H.R. 116 for the following fundamental reasons:

The bill does not deal with tariffs and revenues. The bill sets a packaging standard for imported tomatoes.

If the measure is made law, the packaging standard would be set—not at the Federal government level—but by a group of regional tomato growers.

American consumers would be adversely affected by higher prices and lower quality tomatoes.

American consumers would not be protected against packaging fraud or any other type of deception.

A new non-tariff barrier would be created and our international trade partners would be free to retaliate against U.S. exports.

H.R. 116 is not a tariff or revenue bill. H.R. 116 is a packaging bill.

Although the explanatory note to H.R. 116 does not say so, the purpose of the bill is to impose a packaging standard on imported fresh tomatoes in the winter time. Currently imported fresh winter tomatoes are subject to the size and quality standards imposed by the marketing order that is in effect in Florida in Southern Florida in the winter time (from about November until May). The Agricultural Marketing Agreement Act says that imported produce must meet size and quality standards imposed on domestic produce if a marketing order is in effect. There are two marketing orders in effect during the winter—one in Florida and one in Texas. The marketing order in Texas is inactive. Consequently, the only active marketing order is the one in effect in Southern Florida and the law says that imported fresh winter tomatoes must meet the size and quality standards mandated by the only active marketing order which is the one in effect in Southern Florida.

Marketing orders are self-imposed standards. The law allows regional farmers to band together to draw up marketing agreements and the Secretary of Agriculture approves the marketing order. The size and quality restrictions now in effect in Florida are self-imposed, self-created Federal standards that apply to domestic and imported produce. The marketing order can be changed by the growers who created it.

The marketing order in effect in Florida includes a packaging standard. The Southern Florida growers have agreed among themselves to ship their mature green tomatoes in 30 lb. cartons and the Secretary of Agriculture has formalized that agreement into a packing standard which every grower and shipper in Southern Florida must follow.

Incidentally, it is interesting to note that not all Florida growers are forced to follow the marketing order. For example, tomato growers in Northern Florida

who harvest their vine ripe tomatoes at a slightly different time (in Spring) because of the difference in climate, do not have a marketing agreement that forces them to package their tomatoes in 30 lb. cartons. In fact, Northern Florida tomato growers prefer to package their tomatoes in the same way as California growers of vine ripe tomatoes. Mexican vine ripe tomato growers pack their tomatoes in the same way as California tomato growers. The similarity of pack between the Mexican growers and California growers is borne out by the use of the name "California lug" to describe the carton used to pack vine ripe tomatoes in California and Mexico.

H.R. 116 would amend the Agriculture Marketing Agreement Act to include a packing standard which would force imported vine ripe fresh winter tomatoes to be packed in the same manner as mature green fresh winter tomatoes grown in Southern Florida.

Contrary to traditional packaging standards practiced nationally by California, Northern Florida, and other vine ripe tomato producing states, Southern Florida tomato growers who ship mature green tomatoes use 30 lb. containers into which they jumble or loosely pack one size of tomatoes. This practice is used by the Florida growers because their tomatoes are of the "mature green" variety. "Mature greens" are tomatoes harvested when they are still hard and green but ostensibly "mature". These tomatoes can withstand rough handling. There is no danger of bruising by this method of packaging since "mature greens" are quite hard and durable. "Mature greens" easily can be packaged according to size and only tomatoes of the same size are placed in a carton. Florida tomatoes are packed more loosely and hence more rapidly than other tomatoes which must be handled more carefully. After the green tomatoes are placed in cartons, they are subjected to ethylene gas which brings out the natural pink color.

Vine ripe tomatoes, those produced in Mexico and elsewhere are harvested when they turn slightly or show a "blush of pink" and can be easily bruised. For this reason, vine ripe tomatoes are hand or place packed. This assures a snug fit and prevents bruising and damage during shipment. The hand packed cartons contain some tomatoes that are slightly larger or slightly smaller depending on the convenience of the fit. This is done only to protect the tomatoes as they travel between the packing house and the market. The vine ripe tomatoes continue to ripen naturally as they travel to market.

Three years ago we presented testimony before the Subcommittee on Domestic Marketing Consumer Relations, and Nutrition of the Agriculture Committee to explain how vine ripe tomatoes are packed and how they are categorized as to size.

We have two photographs taken at the hearing that show how the vine ripe tomatoes are packed, both in Mexico and in California. Please note that the growers from the two areas pack their tomatoes in exactly the same manner.

Hand packing assures a tight and snug fit so that the tomatoes are not bruised or damaged during transit. To assure proper fit, slightly larger and slightly smaller tomatoes are used. All tomatoes vary in shape somewhat so that hand packers use slightly different sized tomatoes to assure snug fit. The differences in size, however, are very slight and virtually unnoticeable.

There absolutely is no commingling or mixing of sizes that are apparent to the nonexpert. Large and small tomatoes are never packed in the same box. Large and medium tomatoes or any other similar combinations of significant variations in sizes are not used in packing vine ripe tomatoes.

Tomato sizes are indicated by the number that fit in a carton, such as 6×6. That designation means that 6 tomatoes fit across one way and 6 tomatoes fit across the other way in a carton or 36 tomatoes per layer. A 5×6 designation would indicate larger tomatoes because there would be only 30 tomatoes per layer per box. Conversely, a carton of smaller tomatoes might be marked 7×7.

The wholesalers and buyers in the trade know the size designations, understand the system perfectly and have been using those size designations for years. There is absolutely no confusion in the marketplace because those who deal in large volumes of tomatoes know the meaning of those designations. There is no misleading or deception of consumers through the present packaging method.

Proponents of H.R. 116 are wrong when they say consumers are deceived because vine ripe tomatoes are not of uniform size when packaged in the so-called "California lugs."

Consumers do not normally buy tomatoes by the carton and so are not affected by how the tomatoes are packaged when shipping in bulk. Consumers choose

tomatoes by individual size, color, shape, etc. Generally, tomatoes are retailed by the pound or kilo, not by the carton. Except for special reasons, only wholesalers and distributors buy tomatoes by the cartons, and they are accustomed to the differences in packaging practices. In fact, volume purchasers deal often with tomatoes packaged in the traditional California lugs—the method used by Mexican tomato producers—since many tomato growers except those in southern Florida seem to use the place pack method.

We feel the packaging standards that would be required by H.R. 116 are not only unnecessary and unreasonable; they would also force foreign producers to conform to an arbitrary standard set by Florida growers for their own convenience to suit their mature green tomatoes.

H.R. 116 packaging requirements would hurt the American consumer

Consumers would not benefit from H.R. 116. They would be hurt by the enactment of H.R. 116. By requiring imported tomato to comply with the packaging practices of Southern Florida growers, foreign producers would be forced to pick their tomatoes at the "mature green" stage in order to package them while they are hard and able to withstand rough treatment. This would adversely affect American consumers because:

The quality of imported tomatoes would decline. Mexican growers would no longer market vine-ripe tomatoes. Instead, imported tomatoes would be of the "mature green" variety. Consumers who prefer vine-ripened tomatoes would no longer have the option of purchasing such tomatoes. Studies have shown that many "mature green" tomatoes are not ready for picking and therefore provide a poor value to consumers.

Consumer prices would increase. The expenditure necessary by foreign producers to convert their packing methods would be passed on to the consumer. These increased costs would not be absorbed by either the producers, the wholesalers, or the distributors, but instead by the American consumers.

U.S. trade relations would be adversely affected by the passage of H.R. 116

The packaging standards used by Florida tomato growers are chosen by the growers to meet their convenience. The Florida packaging methods are suited to the type of tomatoes they produce, i.e. "mature greens". H.R. 116 would not serve to equalize any imbalance in the marketing of imported tomatoes versus the marketing of domestic tomatoes, for no such inequality exists. H.R. 116 would only reduce competition in the marketing of tomatoes by reducing the quality of the tomatoes and increasing their prices. In addition, the implementation of H.R. 116 would affect overall U.S. trade relations by creating a non-tariff barrier on imported tomatoes. Such an action would create unnecessary strain on U.S. trade relations with Mexico and would encourage our trading partners to create their own non-tariff barriers.

The question of how to package imported tomatoes was examined at length before the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition of the House Committee on Agriculture on October 4, 1977. The bill under consideration at that time was H.R. 744, a bill that is identical to the present bill, H.R. 116. The Subcommittee considered the bill in 1977 but failed to take action on it, and the bill died in Committee.

During the 1977 hearings, Administration officials were concerned with the probable consequences of the packaging bill. Officials from the State and Agriculture Departments, and the Office of the Special Trade Representative expressed opposition and said the bill interfered with U.S. free trade policy. Just last month, an Administration official stated the Administration's opposition to H.R. 116.

SUMMARY

We feel H.R. 116 is unreasonable, unnecessary and not in the best interests of American consumers or U.S. trade relations. The bill tends to reduce competition and serve the interests of the Southern Florida tomato producers.

The Agriculture Subcommittee examined this same issue three years ago and since then the issues have not changed. As we did then, we oppose this unnecessary packaging legislation. We believe the Consumer Federation of America, the nation's largest consumer organization, best summarized the sentiments of all of us when it opposed H.R. 744 back in 1977 and called the legislation "unjustified and unreasonably burdensome packaging standards on imported tomatoes."

Fresh Fruit and Vegetable MARKET NEWS

NOGALES FRUIT & VEGETABLE DAILY REPORT

U. S. DEPARTMENT OF AGRICULTURE, AMS
FRUIT AND VEGETABLE DIVISION
P.O. BOX 2292
NOGALES, ARIZONA 85621
Tel 281-0374
RECORDER: 281-0625

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APRIL 11, 1980

LEASED WIRE REPORT, TODAY'S IMPORTANT WHOLESALE MARKETS- MEXICO STOCK

PRICES SPOON ARE THE GENERAL RANGE (WITH MOSTLY PRICES SHOWN IF GIVEN) OCCASIONALS, FEWS, ONE LABELS, ETC., OMITTED. OTHER THAN GOOD QUALITY AND CONDITION IN PARENTHESIS. ARRIVALS IN 1,000 LB. UNITS.

	TOMATOES Plats	LUGS 6/6s	6/7s	CHERRY TYPE 12-Pint	CUCUMBERS: (Most 1-1/9Bu.Crts.Waxed) Medium	Fr Quality
ATLANTA:	Mkt.ABT.STDY.ARR.FL.199 MX. 67				Mkt.ABT.STDY.ARR.FL.11 MX. 19	
MX.	6.00-6.50	-	-	7.50-8.00	-	-
FL.	7.50-9.00	7.00-8.00	6.00	-	20.00	-
BOSTON:	Mkt.ABT.STDY.ARR.FL.484 CH.TOM.MX. 8				Mkt.ABT.STDY.ARR.FL.31 MX.63	
MX.	-	-	-	7.00	23.00-25.00	21.00-23.00
FL.	8.00	12.00-12.50	8.00-9.00	-	-	-
CHICAGO:	Mkt.ABT.STDY.ARR.FL.35				Mkt.OFS.VERY.LOT.ARR.MX.17	
MX.	6.50-7.00	8.00	7.00	10.00	-	-
FL.	8.00	12.00	9.00	-	-	-
CINCI:	Mkt.ABT.STDY.ARR.FL.39 MX. 108 CH.TOM.MX. 29				Mkt.ABT.STDY.ARR.FL.10 MX. 71	
MX.	7.00-7.50	9.00	8.00	-	20.00	-
FL.	9.50	13.00-13.50	-	-	-	-
CLEVE:	Mkt.ABT.STDY.ARR.MX.27				Mkt.SL.HGR.ARR.FL.3 MX.6	
MX.	7.00-8.00	8.00-10.00	6.50-7.00	9.00	20.00	16.50-17.00
FL.	-	13.50-14.00	10.50-11.00	-	-	18.00
DALLAS:	Mkt.ABT.STDY.ARR.MX. 230 CH.TOM.MX.20				Mkt.ABT.STDY.ARR.MX.25	
MX.	5.50-6.00	6.50-7.00	6.00-6.50	5.25-6.00	19.00-23.00	15.60-17.50
FL.	-	-	-	-	-	-
DENVER:	Mkt.STDY.ARR.MX.15				Mkt.HIGHER ARR.UNAVAILABLE	
MX.	9.00	-	-	7.50-8.50	20.00-21.50	-
FL.	-	-	-	-	-	-
DETROIT:	Mkt.ABT.STDY.ARR. FL.155 MX. 102				Mkt.HGR.ARR. MX. 55	
MX.	9.50-8.50	9.00	-	8.00	21.00	18.00-20.00
FL.	9.50	13.00-14.00	9.00-10.00	-	-	-
L.A.:	Mkt.ACT.STDY.ARR. FL.36 MX. 732 CH.TOM.MX.28				Mkt.UNAVAILABLE ARR.MX.42	
MX.	5.00-6.00	6.00-7.00	5.50-6.50	5.00-6.00	20.00-22.00	-
FL.						
ST.LOUIS:	Mkt.ABT.STDY.ARR.FL.60 MX. 44 CH.TOM.MX.8				Mkt.SUP.LOT.ARR.MX.1	
MX.	7.00-9.00	8.00-9.00	6.50	6.50-7.50	22.50	20.00
FL.	-	-	-	-	-	-
N.Y.C.:	Mkt.LOWER ARR.FL.750 MX. 18				Mkt. UNAVAILABLE ARR.MX.47	
MX.	-	-	-	7.50-9.00	-	-
FL.	-	12.00-14.00	-	-	-	-
PHILA:	Mkt.STDY.ARR. FL.436 CH.TOM.MX. 14				Mkt.SUP.LOT.ARR. FL. 15	
MX.	-	10.50-11.00	-	8.50	-	-
FL.	-	11.00	9.00	-	20.00-23.00	-
N.ORLEANS	Mkt.SL.LOWER ARR.MX.75				Mkt.FIR.ARR.MX37	
MX.	7.50-8.50	-	-	6.00-6.50	18.50	14.00-16.00
FL.	10.00	-	-	-	-	-
HOUSTON	Mkt.ERLY STDY.ARR.MX. 183 CH.TOM.MX. 15				Mkt.UNAVAILABEL ARR.MX. 56	
MX.	7.00-7.50	-	-	5.50-6.50	-	-
FL.	-	-	-	-	-	-
SAN FRAN:	Mkt.LOWER ARR.MX. 189 CH.TOM.MX. 9				Mkt.ABT.STDY.ARR.MX. 42	
MX.	-	-	-	7.00-7.50	17.00-17.50	14.00-15.00
FL.	7.00-7.50	9.00-9.00	8.00-8.50	-	-	-

	PEPPERS: (1-1/9Bu.Ctns.& Bu.Crts.) Large	Medium	Small	EGGPLANT 18s	24s	SQUASH: Zucchini (Lugs) Small	Med-Lge
ATLANTA:	Mkt.ABT.STDY.ARR.FL.21			Mkt.ABT.STDY.ARR.FL.2		Mkt.ABT.STDY.ARR.FL.28	
MX.	-	-	-	-	-	-	-
FL.	13.50-14.00	12.00	7.00-7.50	8.50-9.00		9.00-10.00	
BOSTON:	Mkt.ABT.STDY.ARR.FL.61 MX. 29			Mkt.HGR.ARR.FL.22		Mkt.ABT.STDY.ARR.FL.49	
MX.	-	-	-	-	-	-	-
FL.	13.00	10.50-11.00	-	10.00-10.50	-	-	11.00-12.00
CHICAGO:	Mkt.OFS.LGR.ARR.FL.55 MX.57			Mkt.ABT.STDY.ARR.FL.12		Mkt.OFS.VERY LOT.ARR.FL.3	
MX.	12.00-13.00	10.00	-	-	10.00	-	-
FL.	12.00-13.00	-	7.00-8.00	10.00	-	-	-
CINCI:	Mkt.HGR.ARR.FL.10 MX.3			Mkt.STDY.ARR.UNAVAIL		Mkt.ABT.STDY.ARR.FL.18	
MX.	13.50	12.25	9.00	6.50-7.00	6.50-7.00	-	-
FL.	-	-	-	-	-	10.50-11.00	-
CLEVE:	Mkt.HGR.ARR.FL.5 MX. 4			Mkt.ABT.STDY.ARR.FL.2		Mkt.ABT.STDY.ARR.MX.1	
MX.	13.00-14.00	12.00-13.00	-	-	-	-	-
FL.	12.00-14.00	-	-	7.00-7.50	-	10.00-11.00	-
DENVER:	Mkt.HGR.ARR.MX. 14			Mkt.STDY.ARR.MX.1		Mkt.STDY.ARR.MX.15	
MX.	11.00-12.00	10.00	-	6.75	6.50-7.00	-	15.00
FL.	13.50	-	-	-	-	-	15.00
DETROIT:	Mkt.HGR.ARR. FL.11 MX. 41			Mkt.LOWER ARR.MX.2		Mkt.ABT.STDY.ARR. MX.3	
MX.	12.50	-	-	6.00-6.50	6.00-6.50	-	-
FL.	15.00	-	-	7.00	-	-	14.50
DALLAS:	Mkt.HGR.ARR.MX.42			Mkt.STDY.ARR.MX.12		Mkt.HGR.ARR.FL.37 MX.8	
MX.	14.00-15.00	13.50	11.50	6.00	6.00	-	-
FL.	12.00	9.00-10.00	-	-	-	-	15.00
ST.LOUIS:	Mkt.SUP.ARR.FL.4			Mkt.ABT.STDY.ARR.UNAVAIL		Mkt.SUP.LOT.ARR.FL.4	
MX.	-	-	-	-	7.00	25.00	-
FL.	-	-	-	12.00	-	-	-
L.A.:	Mkt. HGR. ARR.MX.104			Mkt.OFS.LOT.ARR.MX.50		Mkt.UNAVAILABLE ARR.MX.26	
MX.	13.00-14.00	11.00-12.00	9.00-10.00	5.00-6.00	4.50-5.50	-	-
FL.	-	-	-	-	-	-	-
N.Y.C.:	Mkt.UNAVAILABLE ARR.FL.100 MX. 17			Mkt.UNAVAILABLE ARR.MX.54		Mkt.OFS.LGT.ARR. FL.53	
MX.	-	-	-	-	-	-	-
FL.	-	-	-	-	-	16.00-17.00	-
PHILA:	Mkt.UNAVAILABLE ARR. FL.30			Mkt.SUP.LOT.ARR.FL.9		Mkt.SUP.LGT.ARR. FL.8	
MX.	-	-	-	-	-	-	-
FL.	-	-	-	11.00	-	15.00	14.00
N.ORLEANS	Mkt.HGR.ARR.FL.10			Mkt.FIR.ARR.MX.6		Mkt.SUP.LOT.ARR.FL.9	
MX.	12.50-13.50	10.00-11.50	-	6.50-7.00	7.00-7.50	-	-
FL.	13.00-13.50	-	-	-	-	12.00	-
HOUSTON	Mkt.UNAVAILABLE ARR.FL.10 MX. 60			Mkt.ABT.STDY.ARR.MX.3		Mkt.SL.LOWER ARR.UNAVAIL	
MX.	-	-	-	-	7.00-7.50	-	-
FL.	-	-	-	-	-	-	-
SAN FRAN:	Mkt.HGR.OFS.LOT.ARR.MX.41			Mkt.STDY.ARR.MX. 13		Mkt.LOWER ARR.MX. 17	
MX.	-	-	-	6.00-6.50	7.00-7.50	-	-
FL.	-	-	-	-	-	-	-

L.A.: BEANS- Mkt.UNAVAIL ARR.MX.30 Tm.Crts. Per Lb. KENTUCKY WONDER TYPE 65-75¢

SAN FRAN: LEAFS- Mkt.SUP.OFS.LOT.ARR.MX.6 BY HIGHER OF MOST OFFER Arr. 30 lb

COMBINED RAIL, BOAR & TRUCK SHIPMENTS IN TRUCKLOTS

April 1980	6	7	8	9	10	TO DATE THIS SSN	TO DATE LAST SSN
TOMATOES:							
Nogales	23	196	133	172	153	10,417	11,416
Oth.Mex.	0	0	0	0	0	-	-
Florida	77	42	110	82	74	15,044	12,795
Calif.	0	0	0	0	0		
Texas	0	0	0	0	0	135	21
TTL	100	238	243	254	227		
TOMS.CHER:							
Nogales	4	13	12	12	13	1,013	780
Oth.Mex.	0	1	0	1	1	-	-
TTL	4	14	12	13	14		
BNS.GRN:							
Nogales	0	5	3	5	4	941	914
Florida	10	5	31	26	14	2,404	4,294
TTL	10	10	34	31	18		
CUCUMBERS:							
Nogales	2	32	15	29	23	7,991	6,420
Oth.Mex.	3	7	2	6	5	-	-
Florida	4	2	17	8	4	2,426	3,996
TTL	9	41	34	43	32		
EGGPLANT:							
Nogales	1	5	4	8	11	1,615	1,245
Florida	2	1	8	4	2	1,170	1,186
TTL	3	6	12	12	13		
PEPPERS:							
Nogales	4	11	22	31	40	4,178	3,464
Oth.Mex.	0	1	3	2	1	-	-
Florida	14	5	32	19	18	2,729	3,412
Texas	0	0	0	0	0	1,437	1,168
TTL	18	17	57	52	59		
PEPS.OTH:							
Nogales	0	1	1	5	1	290	313
Oth.Mex.	0	0	1	1	1	-	-
TTL	0	1	2	6	2		
SQUASH:							
Nogales	1	4	7	9	5	2,424	2,575
Oth.Mex.	0	1	0	0	1	-	-
Florida	8	6	26	14	10	1,813	1,936
Texas	0	0	0	0	0	94	73
TTL	9	11	33	23	16		
WATERMELONS:							
Nogales	0	41	16	22	19	909	645
Calexico	0	0	0	1	1	-	-
Oth.Mex.	0	21	22	19	34	-	-
TTL	0	62	38	42	54		
CANTALOUPES:							
Nogales	8	4	10	12	14	182	118
Oth.Mex.	19	33	25	34	29	-	-
TTL	27	37	35	46	43		

FLORIDA TOMATO PACKOUT
(Florida Tomato Committee)

April 10, 1980

GREENS 30's		BREAKERS TO REDS 20's	
Ex.Large & Lgr.	20,597	Ex.Large & Lgr.	2,260
Large	56,808	Large	17,670
Medium	42,370	Medium	11,362
Small	18,835	Small	2,464
TTL	138,610	TTL	33,756

WEST MEXICO TOMATO CROSSINGS BY PACKAGE COUNT
(U.M.F.M.)

April 10, 1980

BREAKERS-RED	TOTAL 211,717	MATURE GREENS 30 LB.	CTNS. TOTAL 41,448
2-Layer Flats	3-Layer Lugs		
4/5s 11,086	6/6s 47,969	4/5s	422
5/5s 39,767	6/7s 32,326	5/5s	2,527
5/6s 73,226	7/7s 7,343	5/6s	14,015
TTL 124,079	TTL 87,638	6/6s	19,016
		6/7s	5,237
		7/7s	231

CHERRY TYPE 27,920 Flats

POMPANO BEACH STATE FARMERS MARKET

BNS.GRN: Demand Fairly GOOD, Market LOWER
Bushel Hampers Or Crates
Round Green 6.00-7.00 Mostly 7.00
Wax 9.00-10.00 Fair Quality 4.00 Few Unsold
CUCUMBERS: Demand GOOD, Market HIGHER
1-1/9 Bushel Cartons, Wide Range In Price
Mostly Medium 18.00-20.00
EGGPLANT: Demand MODERATE, Market ABOUT STEADY
Bushel Cartons
Medium 7.00-8.00
Small-Medium 5.00-6.00 Few 4.50 Fair Quality 3.00-4.00 Mostly 3.00-3.50
PEPPERS: Demand VERY GOOD, Market HIGHER
CALIFORNIA WONDER TYPE
Extra Large & Large 1-1/9 Bushel Cartons 12.00
SQUASH: Demand ZUCCHINI GOOD, Market ABOUT STEADY
ZUCCHINI WIDE RANGE IN PRICE
Small 8.00-10.00 Mostly 8.00
Medium 4.00-5.00 Mostly 4.00

MEXICO IMPORTS SOUTH TEXAS

CANTALOUPES: Demand LIGHT, Market SLIGHTLY LOWER, JUMBO CRATES
36s 24.00-26.00
Few 27s 24.00-25.00
45s 17.00-20.00 Mostly 19.00
Precooling 60¢ Extra

SHIPPING POINT INFORMATION FOR THURSDAY
APRIL 10, 1980 - FOR SHIPPING TODAY

WEST MEXICO SALES BASIS FOR NOGALES, ARIZONA
DOCK & CROSSING CHARGES PAID. EXTRA SERVICES EXTRA. (Weather Unavailable)

BNS.GRN: Demand GOOD, Market STEADY
KENTUCKY WONDER TYPE
1-1/9 Bushel & Bushel Crates
Cents Per Lb. 45-55¢ Mostly 50-55¢ One Label 60¢
CUCUMBER: Demand VERY GOOD FOR LIGHT SUPPLIES, Market FIRM, MOSTLY STAKE-GROWN
1-1/9 Bushel Crates & Cartons
Medium 16.00 Few 18.00
Fair Quality 14.00 Few 16.00
Small 14.00 Few 16.00
Large 12.00
Cartons 24s 7.00
EGGPLANT: Demand GOOD, Market FIRM
Bushel Crates & Cartons
24s 4.00 Occ. 4.50
18s 3.50-4.00 Mostly 3.50
PEPPERS: Demand VERY GOOD, Market SLIGHTLY HIGHER
CALIFORNIA WONDER TYPE
1-1/9 Bushel Crates & Cartons
Large 10.00-12.00
Medium 8.00-10.00
Small 6.00-8.00
TOMATOES: Demand FAIRLY LIGHT, Market LOWER
NONE UNSIGNED
BREAKERS-LIGHT,RED PLACE-PACK STAKE-GROWN
2-Layer Flats
4/5-5/6s 4.00-5.00 Few 5.50 Few 3.00-3.50
3-Layer Lugs
6/6s 4.50-5.50 Few 6.00 Few 3.50-4.00
6/7s 4.00-4.50 Few 3.50 Occ. 5.00
7/7s 3.00-3.50 Occ. 4.00
MATURE GREENS: Demand LIGHT, Market LOWER
85% U.S. FNE 30 LB. CARTONS
4/5-5/6s 7.00-8.00
6/6s 6.00-7.00
6/7s 5.00-6.00
CHERRY TYPE: Demand LIGHT, Market BARELY STEADY
12-Pint Flats 3.00-4.00 Few 5.00 High Color Low As 2.00
WATERMELONS: Demand GOOD, Market HIGHER
Cents Per Lb.
Jubilee Cartons 4-6s 13-14¢ Bulk 9-10¢ Mostly 9¢

SOUTH & CENTRAL FLORIDA: (Belle Glade Cloudy 66-80 .14" Rain Past 24 Hrs., Sanford Clear 61-81, Homestead Partly Cloudy 65-83 .26" Rain Past 24 Hrs.)

BNS.GRN: Demand POLES FAIRLY GOOD, ROUND GREEN LIGHT, Market POLES STEADY, ROUND GREEN LOWER
Bushel Hampers & Crates
Poles 10.25
Round Green 7.25-8.25 Few Including Fair Quality Lower
CUCUMBERS: SUPPLIES LIGHT, Demand GOOD, Market
1-1/9 Bushel Cartons Waxed
Medium 20.00 Fair Quality 15.00-16.00
Small 18.00
Cartons 24s Medium-Large 6.00-7.00 Mostly 6.50-6.75
EGGPLANT: SUPPLIES LIGHT, Demand MODERATE, Market ABOUT STEADY
Bushel Cartons
Small-Medium 7.25-8.25 Fair Quality 3.25-4.25
PEPPERS: Demand GOOD, Market ABOUT STEADY
CALIFORNIA WONDER TYPE
1-1/9 Bushel Cartons
Large 12.00
Medium 9.00-10.00 Mostly 10.00
Small 5.00-6.00
SQUASH: Demand GOOD FOR LIGHT SUPPLIES, Market STEADY
ZUCCHINI 5/9 OR 1/2 Bushel
Small 10.25
Medium 6.25

SOUTH FLORIDA: (Homestead Cloudy 64-79 .46" Rain Past 25 Hrs. ,Immokalee Fair 58-85)
April 11, 1980

TOMATOES: LIGHT HARVESTING, Demand LIGHT, Market ABOUT STEADY
30 LB. CARTONS MATURE GREEN LOOSE, WIDE RANGE IN PRICE

80% OR MORE U.S. NO. 1	U.S. No. 2
5/6s 10.00-12.00	Few 8.00-9.00
6/6s 9.00-11.00	7.00-8.00
6/7s 5.00-6.00	3.50-4.50
7/7s 3.50-4.00	2.00-2.50

20 LB. CARTONS PLACE-PACK BREAKERS TO LIGHT RED U.S. COMBINATION
5/6s & 6/6s 6.00-7.00 Mostly 6.00

WHOLESALE MARKETS - WATERMELONS

ATLANTA: Mkt.ABT.STDY, MX. Ctns. Jubilee 4s 20-22¢ 3s 19¢
BOSTON: Mkt.ART.STDY, MX. Ctns. Approx. 80-85 Lbs. Per Lb. Allsweet 3s 20¢ 4s One Brand 20¢ One Brand 22¢ Jubilee 3 & 4s 20-22¢ Long Gray 20-21¢ Mostly 20¢
DALLAS: Mkt.STDY. MX. Ctns. Per Lb. Jubilee 4s & 5s 18-19¢ Mostly 19¢ Long Gray [illegible]

Fruits and vegetables

TORONTO (CP) - Trading was steady on the Toronto wholesale market Monday.

Ontario grown No. 1 or fancy grade unless otherwise specified. Market prices to 9:30 a.m.

Apples: Ont. McIntosh 6x4 qt. 11.00-11.75; McIntosh 1 b one bushel 13 50 14 50; red Delicious 12x3 lb 11 50 12 00; red Delicious 6x4 qt. 12 00-13 00; B.C. red Delicious ctn. extra fancy 88 113s 20 50 22.00; B.C. red Delicious fancy 100-113s 17 50 18 50; B.C. golden Delicious 88 100s extra fancy 16 50 17 00; Spartan ctn. one bushel 17 50 17.75; 12x3 lb. 13 50-14.50; Wash. golden Delicious extra fancy 96-120s 20 00 22 00; 100 113s 17.75 20 00; Wash. red Delicious 1 p ctn. bushel extra fancy 20 00 23 00; Chile Granny Smith ctn. 113s and larger 21 00-23 00.

Asparagus: Calif. crt. 30 lb. large 38 00 43.00.

Beans: Ga., Fla. green hamper 12 50-13.50; waxed 17 00 18 00.

Beets: Ont. bulk bag 50 lb. 4 50 5.50; Texas ctn. bunched 2 doz. 9 00 11 00.

Broccoli: Calif. ctn. 14-18s 12.75-14.00.

Cabbage: Ont. ctn green 12 16s 3.75 4.50; ctn. 16s red 5.00 5.50; Texas, Fla. ctn. wirebound 50 lb. green 6.75 6.50

Carrots: Ont. cello 24x2 lb. 5.25 6 00; 50 lb. loose 3.75 4.50. Calif. bunched ctn. 2 doz. 8.25 9 00.

Cauliflower: Calif., cello 12s 16.00-17.50.

Celery: Fla. wirebound ctn. 24s 10 00-10.75; 48s 10.00 10 50.

Corn: Fla. wirebound crt. 9.50-10 25.

Cucumbers: Ont. hothouse regular super kings 10 30; kings 9 00; queen 9.50; prince 8.50; Ont. hothouse seedless 1 doz. extra large 8 25; large 8 00; medium 7.50; small 6.00.

Eggplant: Mexico wirebound 18 24s 8.50 11.00; Fla. ctn. one bushel 10 75 11 50.

Endive: Fla. wirebound 24s 7.50 8 00

Escarole: Fla. wirebound 24s 6 00-6.75.

Grapes: Chile lug 6 5 kilo Thompson seedless 19 50 22 00; Chile 4 5 kilo Ribiers 11 50 15 50, Chile Emperor lug 6.5 kilo 11 00 12.00; Columbia 7 kilo green 18 00-18 75.

Green onions: Ariz., Calif., Mexico bunched 6 doz. 6.50 7.50.

Lettuce: Calif head ctn. c.a. 24s 12 00-13.50; romaine ctn. 24s 10.50-11.25; Fla. romaine ctn. 24s one bushel 9.00-10 00; Fla. ctn. head 24s 10 50 11.00.

Mushrooms: Ont ctn. 5 lb. No. 1 6 25 6 40; button 6 00 6.15.

Onions: Ont. yellow 1 g 50 lb. large 6.00 6.50; medium 5.50 6 00; yellow 12x2 lb. 3 00 3.75; Idaho, Ore., Spanish type 50 lb. bag 7.50 8 50; Mexico Spanish type bag 50 lb. 8 50 9.00.

Parsley: Texas basket bunched 5 doz. 10 00 11 00

Parsnips: Ont. 12x2 lb. 7.50 8.00.

Pears: Wash., Ore., Anjou U.S. No. 1 42 lb. ctn. 21.50 22 00; Chile packham 42 lb. crt. 29 00 32 00.

Peppers: Mexico, Fla. ctn. one bushel green large 16.00-18.50; medium 16 00 17.00.

Potatoes: Ont. red or white 10x5 lb. No. 1 5.25 5 50; P.E.I. 50 lb. ctn. 100s white bag 5.75 6 25; white 50 lb. 2.40-2 65; 20 lb. 1.25-1 30; 10 lb. .65-.70; Fla. red bag 50 lb. 7.50 8.50; Fla. new white 9.00-10 00.

Radishes: Fla. cello 30x6 oz. 4.50 4.75.

Rutabagas: Ont. waxed ctn. 50 lb. 3.50-4 50.

Spinach: Texas cello 12x10 oz. 7.00-7.50; Va., basket one bushel 12 00-15 00.

Strawberries: Calif. 12x1 pint 10.00-11.00.

Tomatoes: Ont. hothouse pink ctn. 8 lb. large 6 75; medium 4.75; Fla. ctn. 30 lb extra large 19 00 21 00; large 14 00 16 00 medium 10 50 12 00. Mexico ctn 6x7 9 50 11 00, 6x6 10 00 11.50, 5x6 9.00 10 00.

Gold and silver

CANADIAN SILVER

Handy and Harman of Canada quoted Canadian silver at $564.88 a kilogram.

LONDON SILVER

LONDON (D.J.) — Opening fixing price for six-month forward silver was $15.862 (U.S.).

CIBC GOLD—SILVER

Opening quotes, in U.S. funds, from the Canadian Imperial Bank of Commerce April 14, gold bid $528 00, offered $533 00 for standard bars of 400 ounces. Silver bid $15.50, offered $16.25 for standard bars of 1,000 ounces. All prices in U.S. funds per ounce.

SCOTIABANK GOLD—SILVER

The Bank of Nova Scotia quoted noon gold on April 14 at $529.00 (U.S.) a fine ounce bid, $529.00 asked for standard bars of 400 ounces and $524.00 bid, $529.50 asked for kilobars (32.147 ounces). Prices for noon silver in standard bars of 1,000 ounces were $15.00 (U.S.) an ounce bid, $15.75 asked.

IN EUROPE

LONDON — The morning fixing price for gold on the European market was $532.90 a fine ounce, compared with $532.00 Friday. The afternoon fixing was $529.75 compared with $530.50.

GOLD INDEX

London Financial Times gold mining index was down 1.2 at 306.5.

Mr. JONES. Thank you very much.

Mr. BAFALIS. May I respond to that?

Mr. JONES. Yes.

Mr. BAFALIS. I just want to point out to the gentleman that our duties are not limited to just tariff matters. We are involved in trade, and we do have jurisdiction in this committee. There is no question about the jurisdiction of this committee.

Mr. JONES. Mr. Macrory.

STATEMENT OF PATRICK F. J. MACRORY, COUNSEL, WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION

Mr. MACRORY. Yes; thank you, Mr. Chairman. I have supplied my own written statement to the subcommittee, and I would ask that that be included in the record.

I just want to make a very few brief points to supplement Mr. Masaoka's statement. And I would like to respond to a couple of points brought out by Congressman Bafalis in his discussion with Congressmen Richmond and Udall.

No. 1, it is quite clear, we submit, that there is no customer confusion caused by the so-called size comingling. If one reads the testimony of the Florida growers, one gets the impression that the Mexicans indiscriminately mix all different sizes of tomatoes in one pack and this confuses the consumer. I have attached to my statement as exhibit A a

series of diagrams showing what a typical Mexican pack of tomatoes looks like in the various different size designations. And I think it makes it quite clear that there is very little difference in the size of tomatoes that appears in a particular pack. And I would urge the committee to study that.

Second, far from being confused or not knowing what they are getting, as the Florida industry has suggested, in fact, as Mr. Masaoka mentioned briefly, a number of customers prefer to get their tomatoes in the California pack form. I have attached to my statement a letter from a local produce dealer—this will be found immediately following the tables in my statement. He has been an independent produce dealer in Washington for more than 6 years. He deals in winter tomatoes from both Florida and Mexico. If I may read an excerpt from his letter into the record:

> Many of the tomatoes which I sell are shipped to Washington in loosely packed bulk crates or cartons but repacked before they are sold to many of my larger customers, which are local restaurants and hotels.
>
> These customers prefer to purchase tomatoes which are packed in two layer boxes—generally 5 by 6 or 6 by 6— in order to insure that they receive a specific number of tomatoes of a uniform size and quality, and that they can easily inspect the tomatoes they are buying.
>
> In order to satisfy this requirement, the packer who sells these tomatoes to me must repack the tomatoes which are received in loosely packed bulk cartons, such as those used by Florida.
>
> I do not understand why some people are suggesting that the buyer does not know what is getting when he buys tomatoes in two layer, carefully packed boxes.

I think that letter speaks for itself.

Now, it has also been suggested that the conditions between the Mexican and Florida tomato growers are not fair, that there is not fair trade between the two. Again, the facts speak for themselves. And I refer the committee to chart A attached to my testimony. This chart, which shows the volume of Mexican tomatoes imported into the United States and the volume of Florida tomatoes sold in the United States for the last 10 years, makes it graphically clear that in fact Florida is the industry which is increasing quite dramatically both in absolute volume of shipments and in market share. Ten years ago Mexico had two-thirds of the shipments in 1969–70. This year and last year that situation has been reversed. Florida now has approximately two-thirds of the market and Mexico one-third.

It is quite clear that Florida is on a substantial uptrend and certainly does not need this kind of protection.

I also draw the committee's attention to table 2 attached to my statement, which shows that the number of acres planted with Florida tomatoes has declined, but only very slightly, over the last 10 years. And of course keep in mind that although there is a decline, there has been an enormous increase in productivity due to different methods of cultivation, which of course accounts for the absolute increase in volume sold. Although I have seen it said over and over again that there are 300 or 400 fewer farmers in Florida growing tomatoes than there were 10 years ago, the fact is that there are almost as many acres under cultivation. What has happened is very simple. It is what is happening to American agriculture all over. The farms are getting bigger. Just to look at the absolute number of farms tells us nothing about the health of the industry.

Finally, I refer the committee to table 3 which shows that in the 1977–78 season, the last season for which profit and loss figures are available, the Dade County tomato farmers made a return on cost of 21 percent. And the Immokalee-Lee made a 10.5-percent return. That certainly does not sound like an industry that is suffering too severely from import competition. It is interesting that the Manatee-Ruskin area which showed a profit of only 2.1 percent, produces most of its tomatoes in May and June when Mexico is not a significant factor in the market. Again, I think that speaks for itself.

Now, it has been suggested that this packaging requirement is necessary in order to make the terms of competition fair to industry. But it is crucial to keep in mind that—and I believe Congressman Richmond makes this point clear in his written statement—we are really talking about two different products here. We are talking about the mature green tomatoes in the case of Florida which can be packaged in this loose bulk form because they do not bruise easily in transit. The Mexican tomatoes are vine ripe and they do bruise if you pack them in the same way as the Florida. So they really are two different products. And to talk about equalizing the terms of competition just, in my submission, does not make sense here where they are two different products. If we were talking about Mexican mature greens as opposed to Florida mature greens, that would be something else; but the fact is that 90 percent of Mexican tomatoes imported to the United States are vine ripe and must be packaged in this tight, close fitting form of package in order not to be damaged.

And if I may make one final point, Congressman Bafalis mentioned this problem of two tomato shipments being found within Florida recently with residues of chlorthiophos residues which are not permitted by FDA. I certainly do not want to minimize that and I do not want to suggest that this was not at least a technical violation of the law. But I believe that particular incident needs to be put into perspective. No. 1, chlorthiophos has already been approved by the U.S. Government for use on peaches and table grapes, and the residues permitted by EPA and FDA are 10 times in excess of those that were found in the tomato shipments in question. Second, there has been an application pending before EPA for more than 1 year to permit this pesticide to be used on tomatoes. And recent inquiries of EPA indicated that they had found no problems to date with the application. The time that has been taken results simply from the usual processes. But there was no indication that there would be any problems with it. As I say, I do not want to minimize the problem, and I am not suggesting that it was not a violation, but at least I think it should be put in perspective. It is not that this is some incredibly toxic pesticide which is not permitted in any form in the United States at all.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF PATRICK F. J. MACRORY, COUNSEL, WEST MEXICO VEGETABLE DISTRIBUTORS ASSOCIATION, NOGALES, ARIZ.

This statement is submitted on behalf of the West Mexico Vegetable Distributors Association of Nogales, Arizona ("WMVDA"), in opposition to H.R. 116, a bill that would extend the provisions of Section 8(e) of the Agricultural Marketing Agreement Act of 1937, as amended, so as to require imported

tomatoes to conform with pack-of-container standards imposed by domestic marketing orders.

WMVDA consists of some 50 American companies located in Nogales which are engaged in the business of importing tomatoes and other fresh fruits and vegetables from Mexico for sale to the retail and wholesale trade in the United States. Virtually all the tomatoes imported into the United States from Mexico are handled by WMVDA member companies.

WMVDA shares the view expressed by the U.S. Dpartment of Agriculture and other government agencies on identically-worded bills introduced in prior Congresses, that enactment of this legislation would be regarded by other countries as a protectionist move, and might result in retaliation which would hamper U.S. agricultural exports. There are further reasons for rejecting this bill, however. As we explain below, no public interest would be served by the legislation—only the special and private interests of a group of Florida growers. And the legislation would be harmful and costly to consumers.

1. The proposed amendment would severely reduce the supply and increase the price of consumer-preferred vine-ripe tomatoes, while favoring green tomatoes that are gassed to induce red color artificially.

The vast majority of tomatoes imported from Mexico are "vine-ripe," that is, are left on the vine until they have begun to turn pink. By contrast, the great bulk of Florida tomatoes are picked at an earlier stage of maturity, when they are still green, are stored in refrigeration until the grower is ready to ship them, and are then artificially colored through exposure to ethylene gas just prior to shipment. Many consumers and members of the trade regard the vine-ripes as superior to the greens, as a result of the differences in flavor and texture.[1]

Because of their greater maturity, vine-ripe tomatoes must be packed much more carefully than greens. The place-packing method (described in more detail in Section 3 below), which results in a tight fit for the tomatoes, has been developed over the years as the most satisfactory means of getting vine-ripes to market without excessive damage. One size of container, known as the Los Angeles type lug, permits place-packing of all the different sizes of tomato imported from Mexico. The green tomatoes shipped by the Florida growers are, by contrast, generally loose-packed, that is, are simply dropped at random into a carton until the desired weight is reached. This loose fill system does not provide such a tight pack for the individual tomatoes as place-packing, and results in rougher treatment during transportation to the market. In addition, the tomatoes are more likely to be bruised when dropped into the boxes than when they are carefully place-packed. The loose fill method is tolerable for green tomatoes, which are relatively hard when shipped. But this method would be totally unsatisfactory for vine-ripe tomatoes from Mexico, which are softer and more easily bruised because of their greater ripeness.

However, if the pack restrictions applicable to the Florida growers are imposed upon imports, it will, for reasons explained in Section 3 below, be virtually impossible for the Mexican producers to continue to use the present form of place-packing in one size of container. In all likelihood, many growers would be forced to switch to loose packing. But in order to do this, they would have to pick their tomatoes at the "green" stage. The consumer's choice between vine ripe and green tomatoes would thus be cut down or eliminated. This change would of course serve the business interests of the Florida growers by eliminating the competition they encounter from consumer-preferred vine-ripe tomatoes. However, consumer interests would be severely impaired by the elimination or reduction of the availability of vine-ripe tomatoes, and the rise in price of those vine-ripes that remain available.

The only alternative would be to adopt different sized boxes for different sizes of tomaties, thus permitting tomatoes of each size category to be place-packed satisfactorily in a given box. This system would, of course, greatly increase the cost of making and inventorying boxes and box material, would require expensive changes in automatic machines used for handling boxes; and would require additional handling by warehouses, motor and rail transporters, and anyone else handling the tomatoes from time of packing until they reach the consumer. The extra cost would naturally be borne by the consumer, and consumer prices for vine-ripe tomatoes would increase accordingly.

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[1] Copies of statements by two leading consumer organizations, attesting to the superior quality of vine-ripe tomatoes, are attached to this statement.

2. The proposed amendment would allow Florida growers to impose restrictions on competitive imports from Mexico, whereas such restrictions would not apply to tomatoes produced in California or other sectors of the United States.

During much of the year American consumers purchase tomatoes grown outside of Florida and Mexico. Vast quantites are produced in California and shipped throughout the country. Very large amounts also emanate from a number of other states.

The proposed amendment would not establish uniform national standards for packing tomatoes. All United States tomato-producing regions outside Florida would be free to use the packing techniques they prefer—and most of them will presumably continue their traditional practice of packing vine-ripe tomatoes in Los Angeles type lugs. (See Section 3 below.) But whenever the Florida growers—in pursuit of their own self-interest—establish packing regulations for their own products, the amendment would automatically apply these regulations to imports. Thus, while not establishing national uniformity, the amendment would vest the Florida growers with a remarkable power to regulate their foreign competitors.

3. The packaging system utilized for Mexican tomatoes is not confusing to purchasers.

Supporters of this legislation have implied that the Mexican tomato producers comingle the size of their exports indiscriminately, and that the buyer in the United States "does not know what he is getting."

Contrary to this assertion, there is simply no evidence whatever that purchasers are in any way confused by the alleged "commingling" of sizes, which has in fact resulted from a change in size nomenclature rather than a change in packaging practices. Until 1973, the size standards laid down by the U.S. Department of Agricutlure, which conformed to the designations used in the trade, were derived from the practice of packing tomatoes in a wooden box approximately 13 inches wide and 16 inches long, known in the trade as the "Los Angeles type lug." This type of container is still used for most tomatoes imported from Mexico, as well as for a very large proportion of those shipped from California and other U.S. production areas. The tomatoes are place-packed in different kinds of rows, depending upon the size of the tomatoes, thus, for example, "6 by 7" tomatoes are those in a size range which permits them to be packed in a Los Angeles type lug so that there wil be six tomatoes in a row running the width of the lug, and seven tomatoes in each row running the length of the lug. "6 by 6" tomatoes are slightly larger and placed in differently arranged rows so that there are six tomatoes in each direction in the same size lug. The dimensions of each size category were defined so as to give that category a slight overlap with the next size. This slight tolerance was designed to permit the careful place-packing in Los Angeles type lugs of tomatoes falling entirely into one of the long-established size categories.

The Los Angeles lug, with place-packing by numbered rows, has been used for 50 or 60 years by both California shippers and importers. It has been so long and so widely used because it permits a good tight pack for the tomatoes, thus enabling them to travel with a minimum of damage, and because this one standard size lug can be filled with tomatoes in any one of the various size categories, thus making it unnecessary to handle different sized boxes for different sizes of tomatoes.

In 1973 USDA changed the size designation for tomatoes from the pack arrangement designations ("6 by 6", "6 by 7", etc.), to the descriptive designations, "extra large", "large", "medium", "small", etc. The new designations eliminated the small overlaps previously existing between the different categories. Accordingly, in order to continue to pack a Los Angeles type lug in, say a "6 by 7" arrangement, it was in some cases necessary to use tomatoes that fell into both the "medium" and "small" categories of the new standards. However, there was no change whatever in the size or mix of the tomatoes that are so classified, and, indeed, most customers continued to use the old designation when ordering tomatoes, and would continue to ask for so many "6 by 6" lugs, so many "6 by 7's," etc.

Rather ironically, the Florida industry was forced recently to ask USDA to revert to the old designations, with some size overlaps, because the industry was beginning to produce a number of oblong tomatoes which did not fit the "medium-small," "medium-large," etc., designations. However, the new designations are different from the pre-1973 ones that were established with Los Angeles lug place-packing in mind, and the permitted overlaps are only half the size of the

overlaps necessary to pack a Los Angeles lug.[2] Besides, if this bill becomes law, the size classification could be changed in future years at the whim of the Florida growers so as to be even more restrictive.

Customers know precisely what size of tomato they will be getting in a place-packed lug or flat, which has remained unchanged for 50 or 60 years. It is absurd to suggest, as the Florida industry has, that the purchasers, who are sophisticated produce merchants and chain stores, will somehow be confused when they know they are getting the same 6 by 7 or 6 by 6 size they have been dealing with for years. I have attached to this statement, as Exhibit A, a series of diagrams showing how vine-ripened tomatoes are place-packed in the various size categories. I think these make completely clear that any "size overlap" of tomatoes packed in a particular size designation is minute, and cannot possibly cause confusion.

Many purchasers in fact prefer to buy their tomatoes in Los Angeles lugs, because it is much easier for them to see the merchandise they are buying. I have attached to this statement a letter from a local produce dealer who says that many of the tomatoes he sells that are shipped to Washington in loose containers—such as those used by the Florida industry—are actually repacked into place-packed, two-layer cartons just like the two-layer flats in which Mexican tomatoes are shipped. This is done at the insistence of his customers, who can thus be certain that they are receiving a specific number of tomatoes of uniform size and quality, and can easily inspect the tomatoes they are buying.

As further evidence that the proposed bill will not help consumers, I am attaching to this statement letters written by various consumer organizations opposing identical bills introduced in prior sessions of Congress.

The fallacy of the Florida industry's assertion that purchasers are confused by the "commingling" of sizes is demonstrated by the fact that the Florida producers are themselves permitted to commingle two sizes—the so-called "6 x 6" and "5 x 6"—under the current marketing order. See 7 C.F.R. § 966.318(a)(2)(ii); 44 Fed. Reg. 68807 (Nov. 30, 1979). The Florida industry has never explained why, in its view, the purchaser is only confused by the commingling of the smaller sizes, and not by the commingling of the larger categories. In fact, the 5" x 6" is the largest size designation in the marketing order, and includes all tomatoes that would have been classified as 5 x 6, 5 x 5, 4 x 5, and 4 x 4 under the pre-1973 designation. Thus, the Florida growers permit themselves to commingle five different sizes of tomato.

4. The original statute did not contemplate that imported fruit and vegetables should be subject to packaging restrictions imposed by marketing orders on domestic products.

It may be suggested to the Committee that H.R. 116 is simply a clarifying amendment that is entirely consistent with the original intent of Section 8(e). Viewed as such, the bill might have a greater chance of enactment than if it were regarded as working a substantive change in the law. However, the express language of Section 8(e), and its legislative history, makes clear that Congress did not intend to include packaging restrictions within the ambit of that provision.

The purpose of the Agricultural Adjustment Acts of 1933 and 1935 and the Agricultural Marketing Agreement Act of 1937 was to establish a rational mechanism for the orderly marketing of basic agricultural commodities, the supply of which was far in excess of demand at the time. One of the methods employed was the authorization of orderly marketing agreements, imposing on domestic producers minimum standards of grade, size, quality and maturity. However, these agreements were not applicable to imported product, resulting in complaints from farm producers that their efforts to improve the quality of products sold under the new mechanism were being frustrated by low quality imports.

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[2] See the following table.

	7X7		6X7		6X6		5X6	
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
Pre-1973 designation	2	2 5/16	2 1/16	2 19/16	2 5/16	2 15/16	2 1/16	3 1/16
New designation	2 3/32	2 9/32	2 7/32	2 17/32	2 15/32	2 23/32	2 23/32	

Sources: 7 C.F.R. § 51.1860 (1968); 7 C.F.R. § 966.318(a)(2)(i); (44 Fed. Reg. 68807, Nov. 30, 1979).

Accordingly, Congress in 1954 enacted Section 8(e), extending the grade, size, quality and maturity provisions contained in domestic marketing orders to imports. The testimony on behalf of the Florida industry in support of this legislation made clear that the sole aim of the legislation was to improve the quality and grade of these products,"[3] and had nothing whatever to do with packaging. The purpose of Section 8(a)—to prevent domestic marketing orders from being frustrated by low quality imports—is clearly in no way affected by the manner in which imports are packed. Had Congress in 1954 intended that packaging restrictions be applicable to imports, it would have expressly said so.

5. The Florida tomato growers are not being harmed by competition from Mexico.

Some supporters of similar bills introduced in prior sessions of Congress have alleged that the amendment to Section 8(e) is needed to help the Florida industry survive competition from Mexico. A look at the basic statistics shows that in fact the Florida industry is not only surviving, but is prospering under present conditions. Table 1 and Chart A tell the story most graphically. Florida shipments of tomatoes have been growing steadily over the last decade, with occasional setbacks due to poor weather, for example in the 1976–77 season. The overall trend has been one of substantial increase. For example, sales last season (1978–79) were 14 percent higher than in the previous record year, 1975–76, and sales so far this year were running about 9 percent higher than last year. Chart A shows clearly that Florida has increased its market share over the last decade, at Mexico's expense.

We have heard claims that there are fewer tomato farmers in Florida today than a few years ago. Whether or not this is so, the fact remains that the number of acres planted in Florida has been growing over the last five years, and—despite greatly increased yields—is not far below what it was ten years ago (see Table 2).

Florida tomato growers also appeared to be making satisfactory returns. According to a study by the Institute of Food and Agricultural Science at the University of Florida, the Dade County tomato growers made a return on costs of 21 percent last season, and the Immokalee-Lee growers 10.5 percent. (Table 3.)

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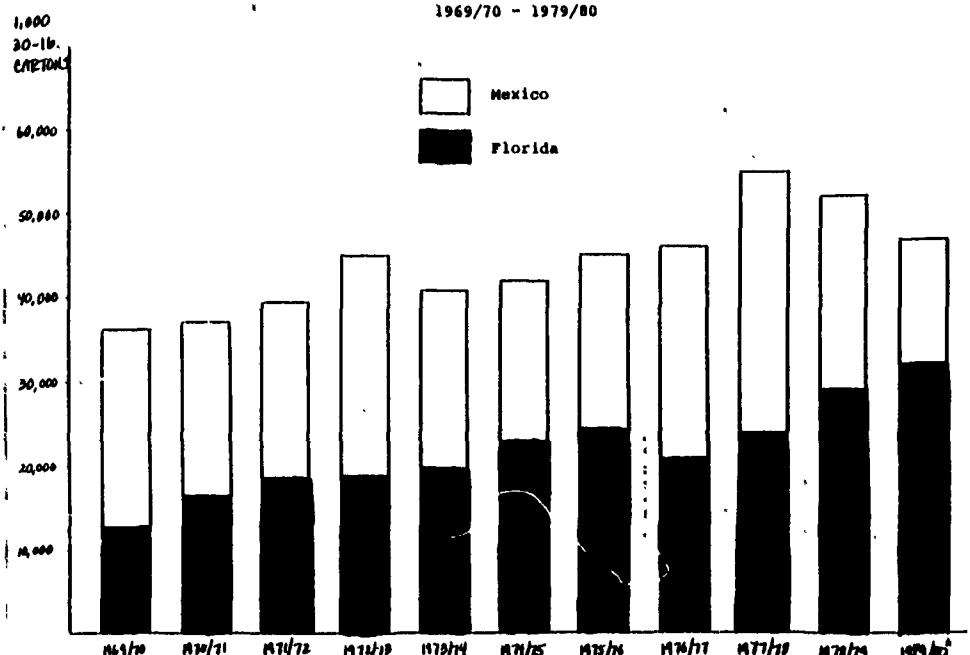
[3] Testimony of L. I. Chandler, Chairman and Director of Competitive Division, Florida Fruit and Vegetable Association, in Hearings Before the Committee on Agriculture and Forestry, United States Senate, 83d Cong., 2d Sess., on S. 3052, part 2, at 1183.

Chart A

Total Recorded Movement of Tomatoes from Mexico and Florida
1969/70 - 1979/80



Source: Federal-State Market News Service, Marketing Florida Vegetables, Summary 1978/79 Season.
*/ 1979/80 Total extrapolated from season-to-date data of Florida Tomato-Potato Reports, 3/12/80.

Interestingly, the only tomato growing area studied by the Institute which did not do so well, Manatee-Ruskin, with a 2.1-percent return, produces most of its crop in May and June, when Mexico is not a significant factor in the market.

There is thus no evidence whatever that Florida needs any assistance—particularly in the form of this protectionist bill—to meet competition from Mexico. It has done well over the last decade, and in the last few years seems to be pulling ahead of Mexico.

In sum, there is no justification for the proposed amendment. The purchasers of imported tomatoes are completely accustomed to the pack arrangements of Mexican tomatoes, and, contrary to the assertions of the Florida industry, know perfectly well what they are getting. The proposed amendment will simply cut down the available choice to the consumers, and increase the cost of imported tomatoes, with no countervailing benefit. The amendment should accordingly be rejected.

TABLE 1.—*Quantities of Florida tomatoes sold (1,000 containers)*

Tomatoes:	
1962–63	22,600
1963–64	24,500
1964–65	24,227
1965–66	25,400
1966–67	24,317
1967–68	23,757
1968–69	20,410
1969–70	15,460
1970–71	19,437
1971–72	21,693
1972–73	23,097
1973–74	23,020
1974–75	26,930
1975–76	29,293
1976–77	24,210
1977–78	28,550
1978–79	33,340

Source.—Florida Crop and Livestock Reporting Service, annual issues of "Vegetable Summary," 1963–78. 1978–79 figures supplied by Florida Crop and Livestock Reporting Service.

TABLE 2.—*Acres planted for Florida tomatoes*

Tomatoes:	
1962–63	46,500
1963–64	46,400
1964–65	54,300
1965–66	53,800
1966–67	49,200
1967–68	47,800
1968–69	49,100
1969–70	52,800
1970–71	43,000
1971–72	44,400
1972–73	46,700
1973–74	35,400
1974–75	31,700
1975–76	38,700
1976–77	43,200
1977–78	42,100

Source.—Reports of Economics, Statistics, and Cooperative Service, U.S.D.A.; Florida Crop and Livestock Reporting Service, "Vegetable Summary" 1978.

TABLE 3.—*Returns on costs, Florida tomatoes, 1977–78 season*

	Percent
Dade County	21.0
Immokalee-Lee	10.5
Manatee-Ruskin	2.1

Source.—D. L. Brooke, "Costs and Returns From Vegetable Crops in Florida, 1977–78 Season" (Institute of Food and Agricultural Science, University of Florida).

IMPERIAL PRODUCE CO., INC.,
WHOLESALE FRUITS AND VEGETABLES,
Washington, D.C., March 14, 1980.

PATRICK F. J. MACRORY, Esquire
Arnold & Porter
Washington, D.C.

DEAR MR. MACRORY: As the owner of Imperial Produce Company, I have been an independent produce dealer in the Washington, D.C. area for more than six years. I deal exclusively in the highest grade of fresh vegetables and fruits, and sell winter tomatoes from both Florida and Mexico to my local customers.

Many of the tomatoes which I sell are shipped to Washington in loosely packed bulk crates or cartons, but are repacked before they are sold to many of my larger customers, which are local restaurants and hotels. These customers prefer to purchase tomatoes which are packed in two-layer boxes (generally 5×6 or 6×6, containing either 60 or 72 tomatoes altogether), in order to ensure that they receive a specific number of tomatoes of a uniform size and quality, and that they can easily inspect the tomatoes they are buying. In order to satisfy this requirement, the packer who sells these tomatoes to me must repack the tomatoes which are received in loosely-packed bulk cartons, such as those used by Florida. I do not understand why some people are suggesting that the buyer does not know what he is getting when he buys tomatoes in two-layer, carefully packed boxes.

Very truly yours,

NICHOLAS T. LYDDANE.

CENTER FOR LAW AND SOCIAL POLICY,
Washington, D.C., September 26, 1977.

Re: H.R. 744.

Representative MORRIS K. UDALL,
Congress of the United States,
Washington, D.C.

DEAR REPRESENTATIVE UDALL: Thank you for your letter of September 22, 1977, in which you request the views of Consumers Union of United States, Inc.[1] on H.R. 744, a bill that would require imported tomatoes to meet packaging standards currently imposed on domestic tomatoes by a marketing order promulgated pursuant to the Agricultural Marketing Agreement Act of 1937.

Along with three other consumer groups, Consumers Union has been involved with issues relating to the marketing of tomatoes in the United States for over six years. This involvement has taken the form principally of participating in Department of Agriculture proceedings connected with tomato marketing orders. Consumers have a strong interest in tomato marketing policies since they affect not only the price but the quality of tomatoes available to the purchaser.

H.R. 744 purports to be a uniform packaging measure that would protect consumer interests. In fact, the packaging of tomatoes in crates according to the terms of this legislation would eliminate from the market the single largest source of "vine ripened" tomatoes, substituting in their place an increased quantity of gas ripened tomatoes, such as those grown in Florida.

This bill would adversely affect consumers in at least two ways. First, tomatoes produced in Florida generally are picked while green and are then treated with ethylene gas. Many of those tomatoes are picked while immature. In contrast, the majority of tomatoes imported from Mexico are vine ripened. Evidence submitted to the Department of Agriculture at the hearings several years ago confirmed that vine ripened tomatoes have better taste and higher nutritional content than tomatoes picked while green and treated with gas. According to statements submitted to the subcommittee of the Committee on Agriculture and Forestry in past sessions of Congress, producers in Mexico would be likely to switch to the packing of green tomatoes for wholesale distribution if legislation such as H.R. 744 is passed. Second, requiring foreign exporters to utilize different types of con-

[1] Consumers Union of United States, Inc., is a not-for-profit corporation organized in 1936 under the laws of New York to provide information and counsel to consumers about their purchases, and to represent the interests of its members. Consumers Union engages in extensive testing of products and publishes test results and general information. It takes public positions on many significant issues of importance to its members and advances those positions in administrative agency proceedings and before the courts.

tainers and to engage in different packing practices would increase costs to consumers. Thus, the American consumer would receive an inferior product and pay more for it if H.R. 744 becomes law.

We have not seen a convincing argument that producers have a legitimate reason for insisting on the standardization called for in this bill. It has been suggested that a lack of standardization is "disruptive" to marketing procedures, but this claim has never been substantiated to our knowledge. There is no consumer deception involved in packing different grades and sizes of tomatoes in the same carton. Indeed, it is obvious the consumers do not purchase tomatoes from wholesale packing crates at all. The proposed packaging standards would affect only how the product is delivered to retailers, not to consumers, who choose tomatoes piece-by-piece. The legislation in question does not deal with the quality of tomatoes at all.

Consumers Union believes that H.R. 744 should not become law since it would result in adverse effects on consumers without any legitimate, countervailing benefit to the national interest. We appreciate your concern for the consumer viewpoint. If you would like any further information, I would be happy to provide it to you or to discuss this subject with your staff.

Sincerely,

JAMES N. BARNES,
Counsel to Consumers Union of United States, Inc.

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., September 26, 1980.

Re H.R. 744

FREDERICK W. RICHMOND,
Chairman, Committee on Domestic Marketing, Consumer Relations, and Nutrition, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN RICHMOND: Consumer Federation of America, the nation's largest consumer organization, would like to express its opposition to H.R. 744 which imposes unjustified and unreasonably burdensome packaging standards on imported tomatoes.

CFA has always fought for fair and accurate packaging and labeling of goods sold to consumers as well as for the high quality, safety and reasonable price of those goods. The packaging requirement for imported tomatoes in H.R. 744, however, does not significantly contribute to those goals of consumer protection. There is no consumer description threatened by the packaging of various grades and sizes of tomatoes in the same carton. The packaging standard only affects how the product is delivered to retailers, not to consumers, who choose tomatoes by individual size, color, shape, etc., and not by their shipping cartons.

On the contrary, the consumer would most likely be hurt by the enactment of this provision. It would lead to either lower quality by forcing foreign tomato producers to pick tomatoes while still green rather than letting them sun ripen, or higher consumer prices by forcing promoters to make large expenditures to change their packaging equipment and methods, which expenditures would be passed on to consumers with no accompanying consumer benefits.

The thick-skinned, gas-ripened tomato has already become a symbol of consumer discontent. In recent years more and more consumers are growing their own tomatoes rather than purchasing this tasteless pale product. The enactment of H.R. 744 might further aggravate this situation by bringing the quality of imported tomatoes down to the level of mediocrity too often characteristic of domestic tomatoes.

It would appear that the motive behind H.R. 744 concerns the whole question of competition and market domination by foreign versus domestic producers.

H.R. 744 is just one episode in the struggle of domestic tomato growers to combine competition from foreign growers. It is important to consumers that such efforts not be permitted to succeed. It would set an unfortunate precedent for providing encouragement for gas-ripened products to further replace vine-ripened products in the supermarket.

Sincerely,

KATHLEEN F. O'REILLY,
Executive Director.
IRENE KESSEL,
Director of Legislative and Legal Research.

Agricultural Marketing Service, 7 CFR Part 910

(Lemon Reg. 228)

LEMONS GROWN IN CALIFORNIA AND ARIZONA; LIMITATION OF HANDLING

Agency: Agricultural Marketing Service, USDA.
Action: Final rule.
Summary: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period December 2–8, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.
Effective date: December 2, 1979.
For further information contact: Malvin E. McGaha, 202–447–5975.
Supplementary information: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.
The committee met on November 27, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons has improved.
It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.
Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202–447–5975.

§ 910.528 Lemon Regulation 228.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period December 2, 1979, through December 8, 1979, is established at 240,000 cartons.
(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.
Dated: November 29, 1979.

D. S. KURYLOSKI,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

7 CFR Part 966 (Amdt. No. 1)

TOMATOES GROWN IN FLORIDA; HANDLING REGULATION

Agency: Agricultural Marketing Service, USDA.
Action: Final rule.
Summary: This amendment extends through June 14, 1980, the minimum grade, size, pack, container, marking and inspection requirements effective from October 15 through November 30, 1979, for tomatoes grown in certain counties in Florida. It promotes orderly marketing of such tomatoes and keeps less desirable sizes and qualities from being shipped to consumers.
Effective date: December 1, 1979.
For further information contact: Dorald S. Kuryloski (202) 477–6393.
Supplementary information: Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966) regulate the handling of tomatoes grown in designated counties of Florida. It is effective under the Agricultural Market-

ing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

Notice of proposed rulemaking was published in the October 18, 1979, Federal Register (44 FR 60105) inviting comments by November 20, 1979. None was filed.

This amendment is based upon recommendations made by the committee at its public meeting in Palm Beach, Florida, on September 7, 1979.

The recommendations of the committee reflect its appraisal of the composition of the 1979–80 crop of Florida tomatoes and the marketing prospects for this season. The regulation is similar except for size to those issued during past seasons and to the temporary regulation in effect during October 15 through November 30, 1979. The grade and size requirements are necessary to prevent tomatoes of lower quality and undesirable size from being distributed in fresh market channels. Such tomatoes are usually of negligible economic value to producers. This will provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop. During the past two seasons, some problems were encountered in properly sizing varieties that have a tendency towards an oblong shape when grown under unfavorable wather conditions. Last season a 1/32 inch overlap of sizes was permitted to help alleviate the problem. This season the overlap has been increased to 2/32 inch in an effort to ensure more accurate sizing. The requirements, including those for containers, container net weights, and size classifications, are intended to standardize shipments in the interest of orderly marketing and to improve returns to growers.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments may be allowed to certain special purpose outlets without regard to minimum grade, size, container or inspection requirements provided that safeguards are used to prevent such tomatoes from reaching unauthorized outlets. Tomatoes for canning are exempt under the legislative authority for this part. Since no purpose would be served by regulating tomatoes used for relief, experimental, or charity purposes such shipments are also exempt. Because export requirements differ materially, on occasion, from domestic market requirements such shipments are exempt.

The following types of tomatoes are exempt from these regulations: elongated types commonly referred to as pear shaped or paste tomatoes, cerasiform type tomatoes commonly referred to as cherry tomatoes, hydroponic tomatoes, and greenhouse tomatoes. Such types are generally of good quality, readily identifiable either by their distinctive shapes or container markings and usually comprise a very small part of the total crop. Only tomatoes shipped outside the regulated area are being regulated because of an increase in the U-pick type of harvest in Florida production areas close to urban areas and resulting difficulty in obtaining compliance with regulations. The minimum quantity exemption permits persons to handle up to 60 pounds of tomatoes per day without regard to the requirements of this part. This reduces the problem of enforcement on small shipments of essentially noncommercial nature. The requirements concerning special pack shipments are intended to help handlers in the production area compete on an equal basis with those outside the area by not requiring reinspection of previously inspected and certified tomatoes when repacked in consumer size packages.

Occasionally individual fruit of several new varieties, including Flora-Dade, may be elongated in shape. This characteristic may be exaggerated by adverse growing conditions. It is anticipated that handlers packing these varieties usually will be able to comply with all provisions of the regulation. However, if situations arise in which the incidence of tomatoes not of the normal globular shape makes sizing in accordance with present grade standards infeasible, the affected varieties may be exempted from the size requirements of the regulation.

Findings. After consideration of all relevant matters presented, including the above proposal recommended by the Florida Tomato Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that the amendment to the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of the 1979–80 crop tomatoes grown in the production area have begun and the regulation should become effective on the effective date herein to maximize benefits to producers; (2) information regard-

ing the provisions of the recommendation by the committee has been disseminated among the growers and handlers of tomatoes in the production area; (3) a temporary regulation with identical requirements is effective for the period October 15 through November 30, 1979; and (4) compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

This regulation has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should not be classified "significant." A Final Impact Analysis is available from Donald S. Kuryloski (202) 447-6393.

7 CFR 966.318 is hereby amended to read as follows:

§ 966.318 Handling Regulation

During the period December 1, 1979, through June 14, 1980, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) of this section or are exempted by paragraphs (b) or (d) of this section.

(a) *Grade, size, container and inspection requirements.*—(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than one percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) Tomatoes shall be at least 2 3/32 inches in diameter and be sized in one or more of the following ranges of diameters. Measurement of diameters shall be in accordance with the methods prescribed in Section 2851.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size classification	Inches	
	Minimum diameter	Maximum diameter
7×7	2 3/32	2 9/32
6×7	2 7/32	2 17/32
6×6	2 15/32	2 23/32
5×6	2 23/32	

(ii) Tomatoes of designated sizes may not be commingled unless they are over 2 15/32 inches in diameter and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are commingled the containers can be marked 6x6 & Lrg. or 5x6 & Lrg.

(iv) To allow for variations incident to proper sizing, not more than a total of ten (10) percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

(3) *Containers.* (i) Tomatoes shall be packed in containers of 20, 30 or 40 pounds designated net weights and comply with the requirements of § 2851.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight and must show the name and address of the shipper in letters at least one-fourth (¼) inch high.

(iii) If the container in which the tomatoes are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the lid of such container shall be marked in a principal display area at least 2½ inches high and 4½ inches long with the words "USED BOX" in letters not less than 1¼ inches high and the name of the shipper and point of origin in letters not less than ⅜ inch high.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Handlers shall pay assesments as provided in § 966.42. Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, experimental purposes, relief, charity or export if the handler thereof complies with the safeguard requirements of pargraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for canning, experimental purposes, relief, charity or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in pargraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver,

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment may be cause for cancellation of such handler's certificate and/or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption*—(1) *For types.* The following types of tomatoes are exempt from this regulation. Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top and Roma varieties; cerasifrom type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of this regulation but this exempion shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragrah (a)(4) of this section which are resorted, regraded and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1) of this section (ii) the size classification of paragraph (a)(2) except that the tomatoes shall be at least 2$\frac{3}{32}$ inches in diameter and (iii) the container weight requirements of paragraph (a)(3) of this section.

(4) *For varieties.* Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempted by the Secretary from the provisions of paragraph (a)(2) *Size.*

(e) *Definitions.* "Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting and repacking tomatoes into consumer size packages and has been certified as such by the committee. "U.S. tomato standards" means the revised United States Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855–2851.1877), effective December 1, 1973, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

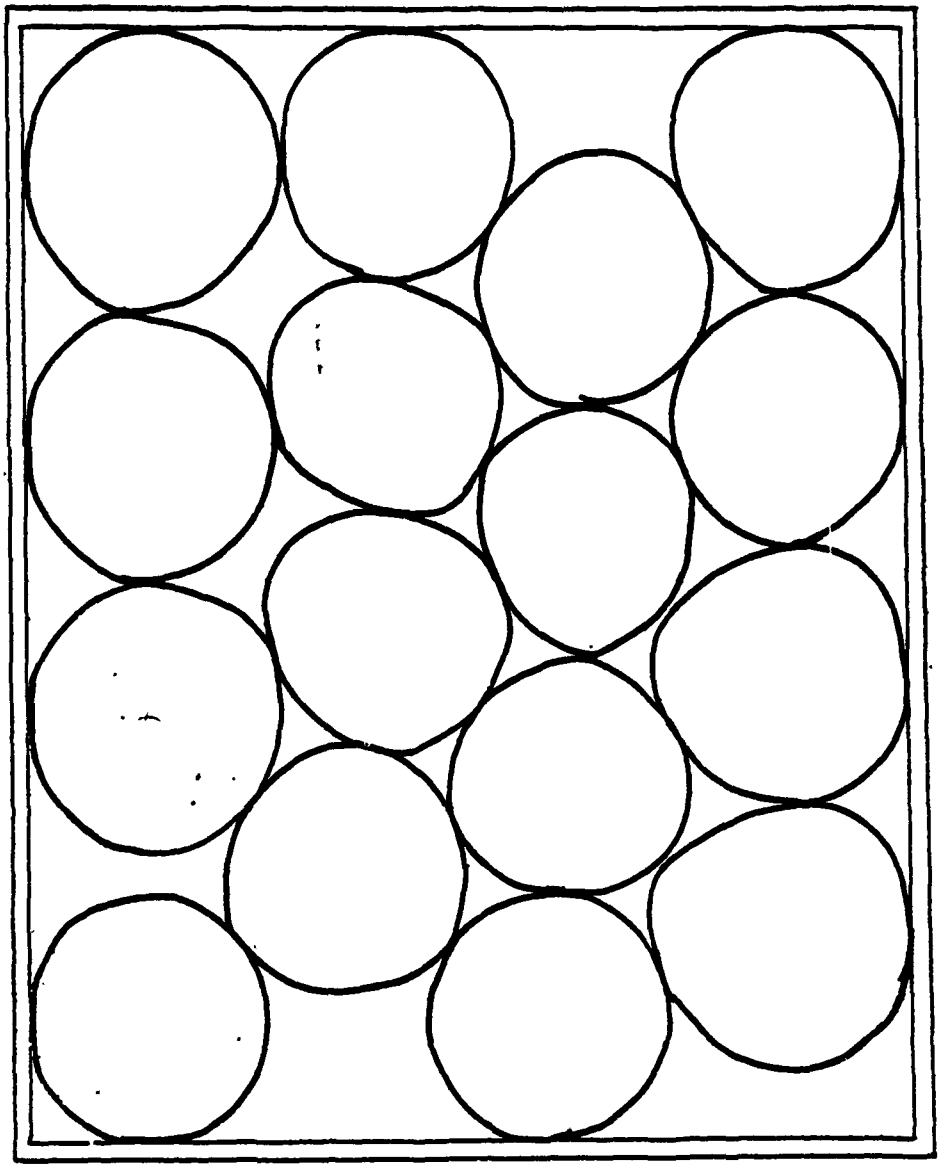
(f) *Applicability to imports.* Under section 8e of the act and § 980.212 "import regulations" (7 CFR 980.212) tomatoes imported during the effective period of this section shall be at least U.S. No. 3 grade and at least 2$\frac{3}{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter.

Dated November 27, 1979 to become effective December 1, 1979.

R. S. KURYLOSKI,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

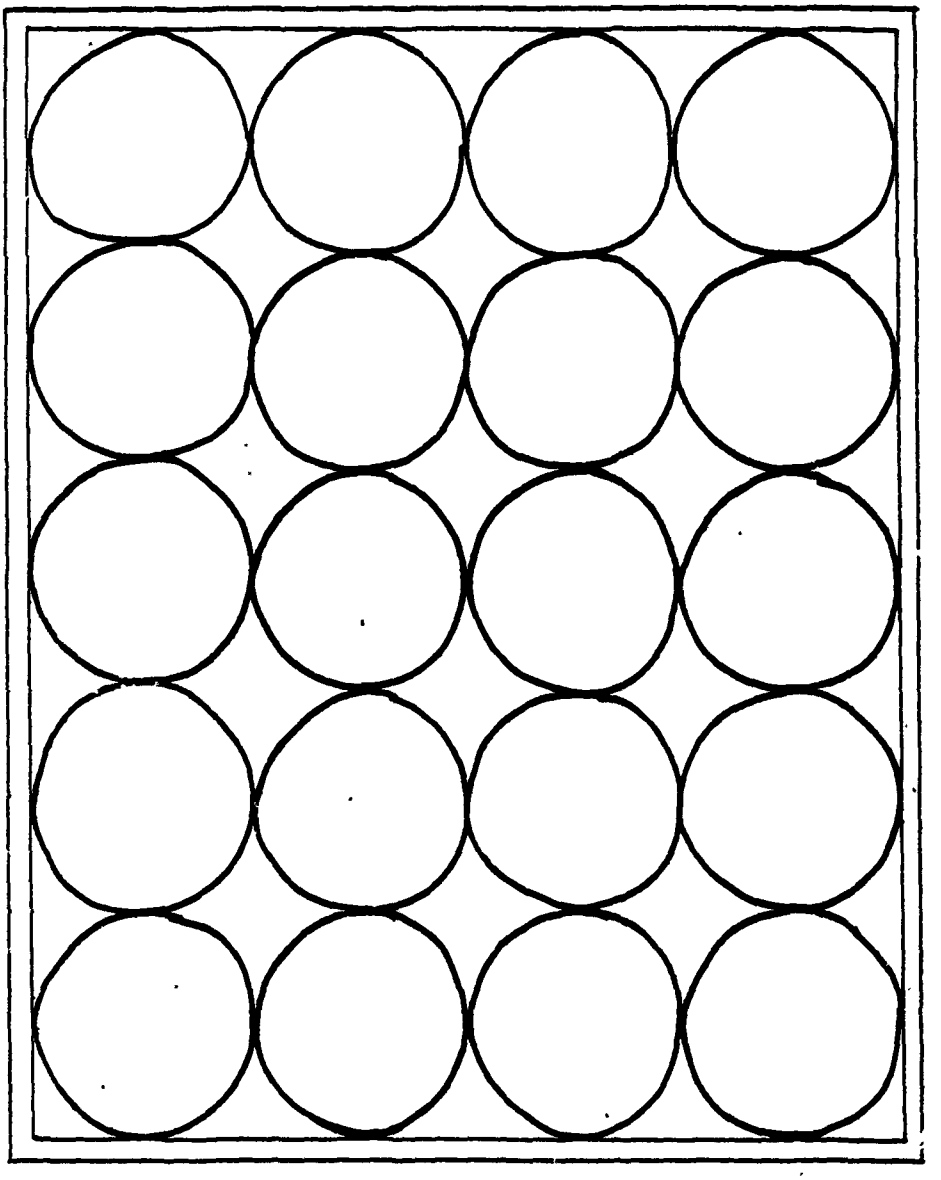
EXHIBIT A

The attached diagrams are intended to illustrate the manner in which Mexican and California vine-ripe tomatoes are packed. As can be seen, in crates with a uniform outer dimension, all sizes of tomatoes can be securely place-packed to avoid bruising. Although a minimal amount of variation in tomato size is necessary to get an ideal pack in each crate, this "commingling" as will be obvious upon examination of the diagrams, is in no way deceiving to anyone.



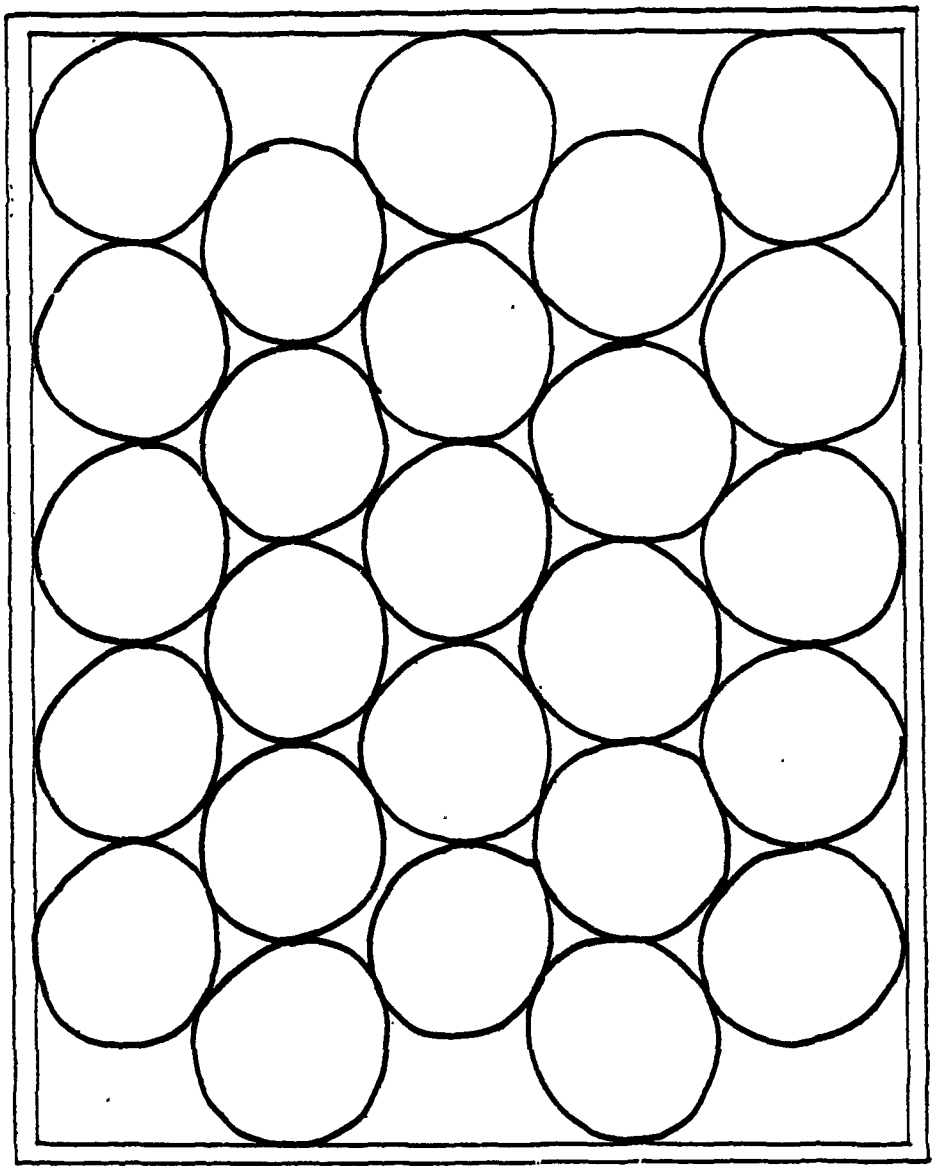
Scale: 1/2 life size

4 x 4 configuration -- Tomatoes are packed in two layers with minimum diameter of 3-5/16" and maximum of 3-15/16".



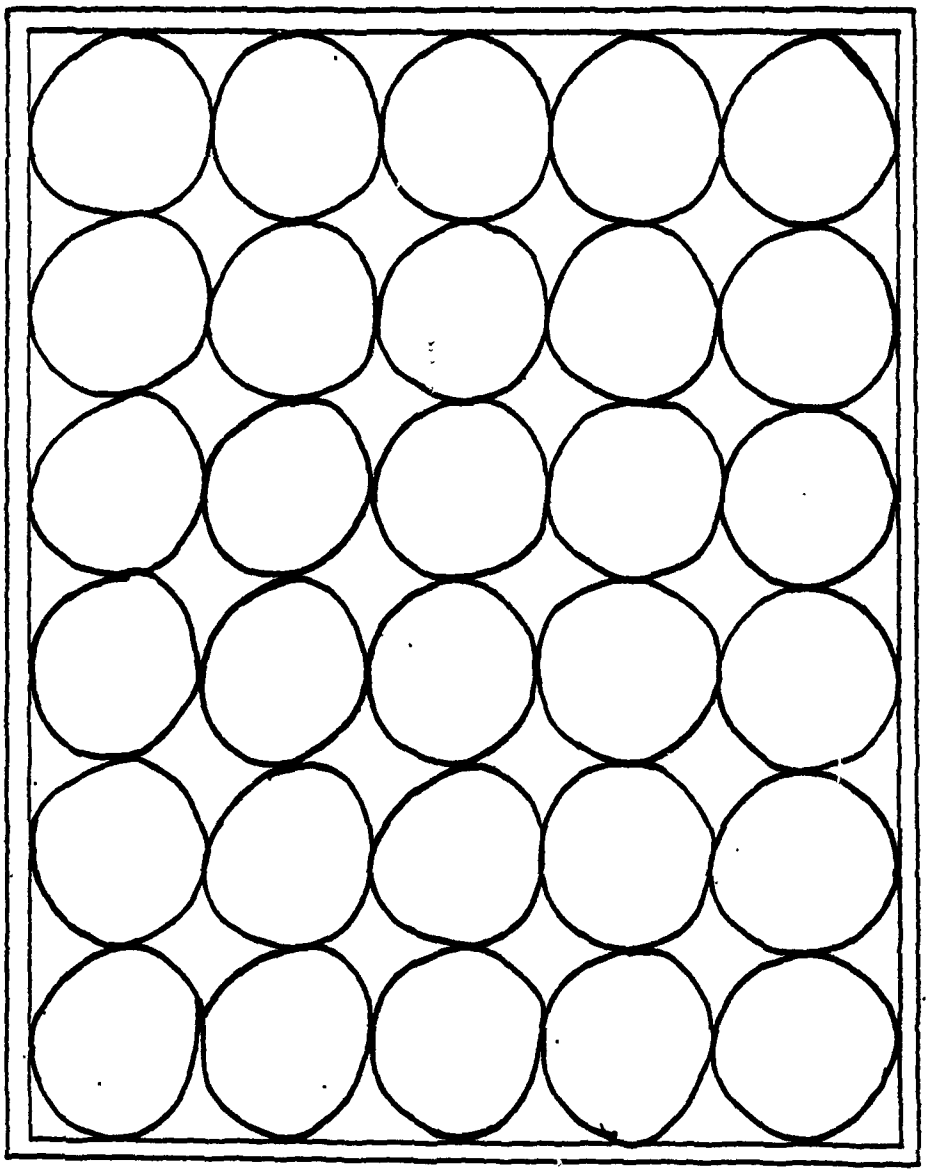
Scale: 1/2 life size

4 x 5 configuration -- Tomatoes are packed in two layers with minimum diameter of 3" and maximum of 3-10/16".



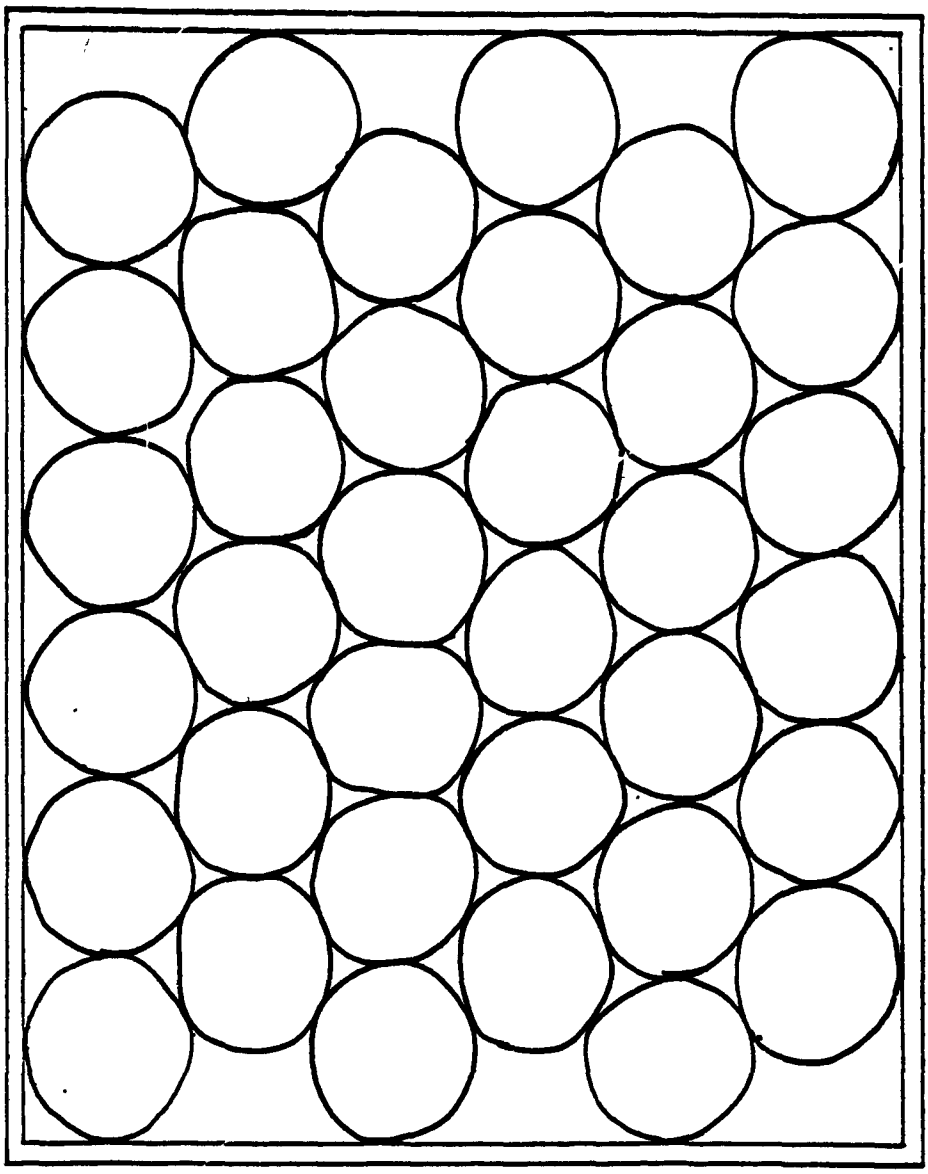
Scale: 1/2 life size

5 x 5 configuration -- Tomatoes are packed in two layers with minimum diameter of 2-14/16" and maximum of 3-6/16".



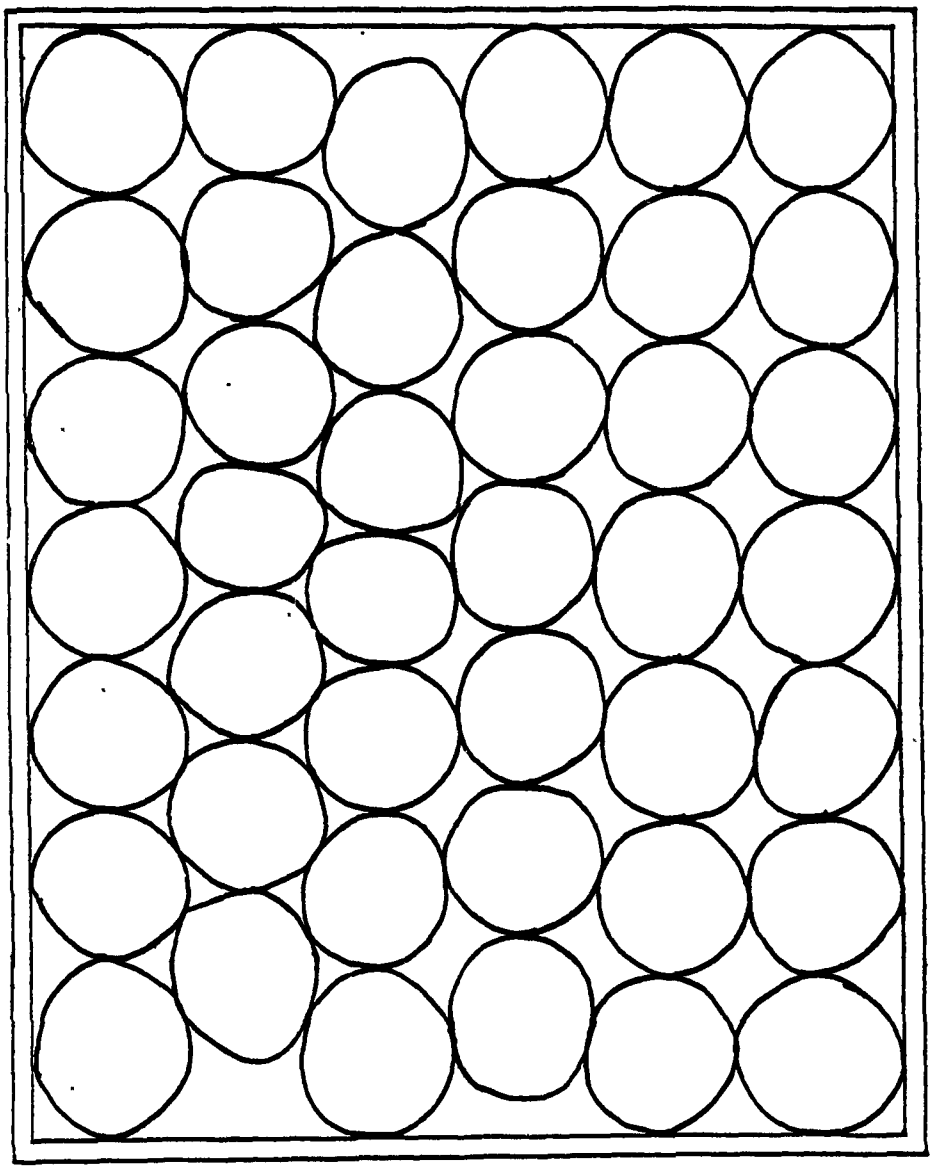
Scale: 1/2 life size

5 x 6 configuration -- Tomatoes are packed in two layers with minimum diameter of 2-11/16" and maximum of 3-3/16".



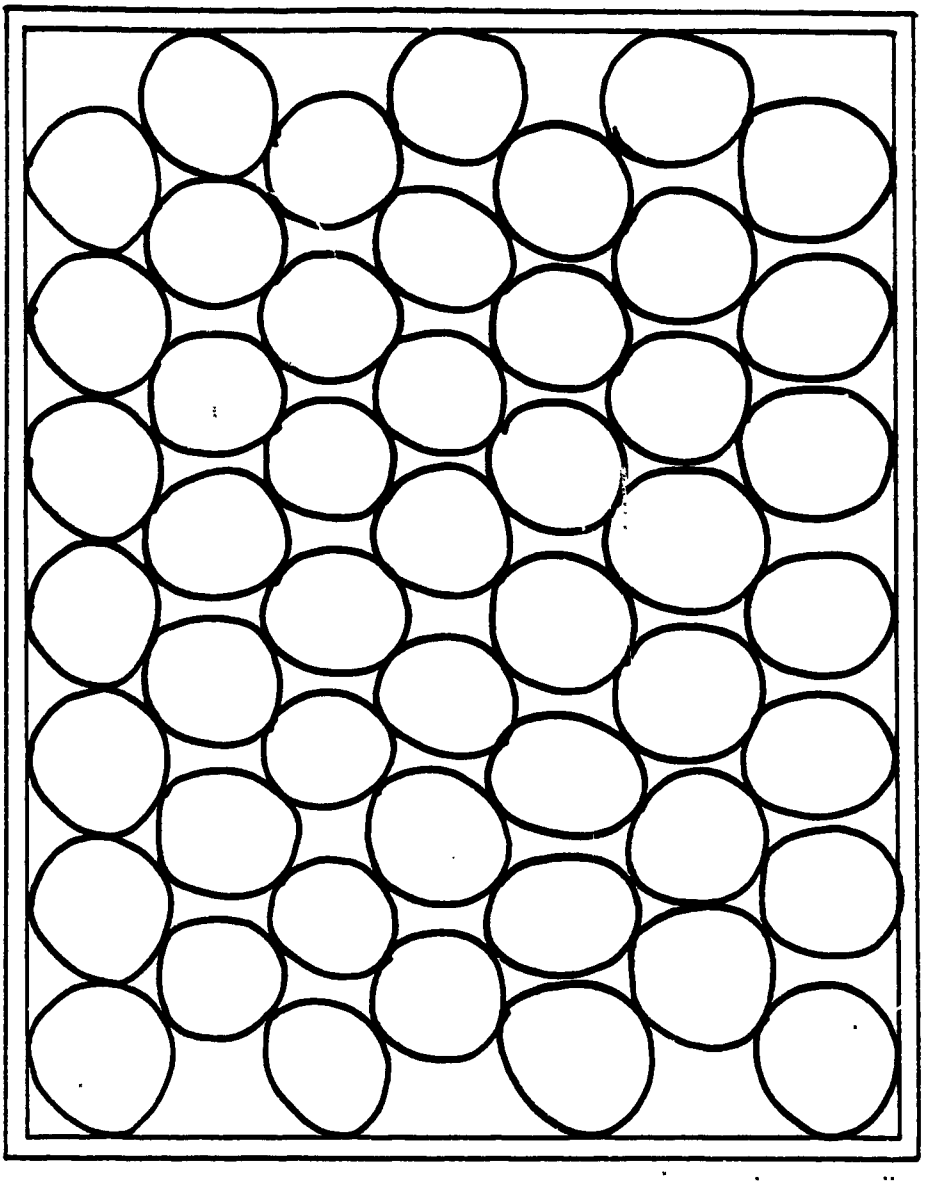
Scale: 1/2 life size

6 x 6 configuration -- Tomatoes are packed in three layers with minimum diameter of 2-8/16" and maximum of 2-14/16".



Scale: 1/2 life size

6 x 7 configuration -- Tomatoes are packed in three layers with minimum diameter of 2-4/16" and maximum of 2-10/16".



Scale: 1/2 life size

7 x 7 configuration -- Tomatoes are packed in three layers with minimum diameter of 2" and maximum of 2-6/16".

Mr. JONES. Thank you, Mr. Macrory. Mr. Bafalis, I am sure you will have some questions.

Mr. BAFALIS. You gentleman just finished quoting Florida profits. Can you make available the profits of Florida and Mexican tomato growers and also the growers who are importing the Mexican tomatoes.

Mr. MACRORY. The profits made by the Mexican growers are, I believe, in the record in the antidumping proceeding in the Commerce Department. I believe they are a matter of public record there. I do not of course have the figures in my head. But I think they were somewhat higher on average than the 21-percent figures.

Mr. BAFALIS. I am sure they were.

Mr. MACRORY. Yes; but we submit that 21-percent figure is not a bad return.

Mr. BAFALIS. You also mentioned a 10-percent figure—the Immokalee figure was 10. You mentioned Dade and then you mentioned Immokalee. If you could document those figures, I would appreciate you making that available to the committee.

Mr. MACRORY. Yes; they come from studies done by the University of Florida by a gentleman named D. L. Brooke who does a study every year of profit and loss. And we have all those available going back, I think, to 1952. And one thing interesting about those figures is if you take the 10-year average from 1955 to 1965, which is the 10 years before Mexico became a factor in this market, the average profit made by tomato growers was somewhat lower than in the next 10 years when Mexico started to become a factor. So, in other words, the tomato growers in Florida have been making more money since Mexico has been in the market than they did before.

Mr. BAFALIS. Well, if you supply the figures, we can make that analysis ourselves.

Mr. MACRORY. Yes; I would be happy to.

[The following was subsequently received:]

VEGETABLE CROPS
in
FLORIDA

VOLUME III.

COMMERCIAL ACREAGE BY COUNTIES
Seasons 1940-41 to 1946-47

TOTAL ACREAGE, PRODUCTION, AND VALUE OF COMMERCIAL CROPS
Fall 1937 to Spring 1947

CARLOT SHIPMENTS BY RAIL OR BOAT
Seasons 1928-29 to 1946-47

MONTHLY COUNTY SHIPMENTS BY RAIL, BOAT, TRUCK AND MIXED CARS
Season 1946-47

PER ACRE COSTS AND RETURNS FROM SELECTED AREAS IN FLORIDA
Season 1946-47

Prepared by

J. R. OWENS
Truck Crop Statistician

G. N. ROSE
and
DONALD L. BROOKE
Associate Agricultural Economists

J. C. TOWNSEND, JR.
Agricultural Statistician
In Charge

December 1947

FLORIDA CROP AND LIVESTOCK REPORTING SERVICE
ORLANDO, FLORIDA

UNITED STATES DEPARTMENT OF AGRICULTURE
Bureau of Agricultural Economics

UNIVERSITY OF FLORIDA
AGRICULTURAL EXPERIMENT STATION
Department of Agricultural Economics

[illegible]: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN THE [illegible]

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples and n.)

Item	Dade	Ft. Pierce
Number of growers	14	39
Number of acres	1997.0	4356.5
Average acres per grower	142.6	111.6
Average yield per acre (lugs)	208.3	230.3
Growing costs:	Average per acre	
Land rent	$ 16.24	$ 11.51
Seed	2.32	4.52
Fertilizer	65.55	73.07
Spray and dust	25.94	42.07
Airplane application	1.35 1/	9.77 5/
Cultural labor	78.25	97.94
Machine hire	.17 2/	19.18 6/
Mule feed	.64 3/	2.14 7/
Gas, oil and grease	9.04	15.13
Repair and maintenance	13.43	16.15
Depreciation	9.93	20.65
Taxes, licenses and insurance	3.49	3.58
Interest on production capital (6% - 5 mos.)	5.80	7.47
Interest on capital invested (other than land)	1.24	2.58
Miscellaneous expense	4.19 4/	4.20 8/
Total growing cost	$ 240.83	$ 339.81
Harvesting costs:		
Picking labor	$ 34.84	$ 79.17
Grade and pack labor	72.81	
Containers	65.56	
Hauling	9.07	18.09
Commission	16.43	7.96 9/
Total harvesting cost	$ 198.91	$ 105.22
Total crop cost	$ 439.79	$ 444.58
Crop sales	$ 587.89	$ 600.42
Net return	$ 148.10	$ 151.09

1/ Reported by 2 growers averaging $ 0.48 per acre.
2/ Reported by 3 growers averaging $ .78 per acre.
3/ Reported by 6 growers averaging $ 1.50 per acre.
4/ Reported by 7 growers averaging $ 8.37 per acre.
5/ Reported by 22 growers averaging $11.56 per acre.
6/ Reported by 22 growers averaging $26.29 per acre.
7/ Reported by 14 growers averaging $ 4.44 per acre.
8/ Reported by 13 growers averaging $ 9.38 per acre.
9/ Reported by 27 growers averaging $ 8.55 per acre.

TOMATOES: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1946-47.

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown.)

Item	Manatee-Tuskin			
	Staked		Unstaked	
Number of growers	11		9	
Number of acres	498.0		83.0	
Average acres per grower	45.3		9.2	
Average yield per acre (lugs)	266.4		241.7	
Growing costs:	Average per acre			
Land rent	$ 31.14		$ 25.25	
Seed	11.44		8.94	
Fertilizer	97.84		53.05	
Side dressing and lime	5.32	1/	8.36	
Spray and dust	38.75		46.22	
Airplane application	1.56	2/		
Cultural labor	271.48		157.76	
Machine hire	5.85	3/	1.56	9/
Mule feed	6.91	4/	9.21	10/
Gas, oil and grease	16.49		13.41	
Repair and maintenance	15.54		13.76	
Depreciation	21.30		16.67	
Taxes, licenses and insurance	3.52		2.74	
Interest on production capital (6% - 5 mos.)	12.68		9.57	
Interest on capital invested (other than land)	2.66		2.02	
Miscellaneous expense	6.56	5/	.56	11/
Total growing cost	$ 544.04		$ 370.19	
Harvesting costs:				
Picking labor	$ 58.51		$ 53.82	
Grade and pack labor	84.52	6/	20.34	12/
Containers	78.88	7/	17.15	13/
Hauling	12.75	8/	10.81	
Commission	34.54		10.38	
Total harvesting cost	$ 269.10		$ 112.52	
Total crop cost	$ 813.14		$ 482.71	
Crop sales	$ 932.47		$ 709.69	
Net return	$ 119.33		$ 226.98	

1/ Reported by 7 growers averaging $ 8.35 per acre.
2/ Reported by 5 growers averaging $ 3.42 per acre.
3/ Reported by 3 growers averaging $ 21.44 per acre.
4/ Reported by 5 growers averaging $ 4.44 per acre.
5/ Reported by 4 growers averaging $ 18.04 per acre.
6/ Reported by 9 growers averaging $103.31 per acre.
7/ Reported by 9 growers averaging $ 96.41 per acre.
8/ Reported by 10 growers averaging $ 14.02 per acre.
9/ Reported by 2 growers averaging $ 7.00 per acre.
10/ Reported by 3 growers averaging $ 10.36 per acre.
11/ Reported by 3 growers averaging $ 1.67 per acre.
12/ Reported by 2 growers averaging $ 91.51 per acre.
13/ Reported by 2 growers averaging $ 77.16 per acre.

VEGETABLE CROPS

in

FLORIDA

Volume IV

COMMERCIAL ACREAGE BY COUNTIES
Seasons 1941-42 to 1947-48

TOTAL ACREAGE, PRODUCTION, AND VALUE OF COMMERCIAL CROPS
Fall 1938 to Spring 1948

CARLOT SHIPMENTS BY RAIL OR BOAT
Seasons 1928-29 to 1947-48

MONTHLY COUNTY SHIPMENTS BY RAIL, BOAT, TRUCK AND MIXED CARS
Season 1947-48

PER ACRE COSTS AND RETURNS FROM SELECTED AREAS IN FLORIDA
Season 1947-48

Prepared by

J. B. OWENS
Truck Crop Statistician

G. N. ROSE
and

J. C. TOWNSEND, JR.
Agricultural Statistician
In Charge

DONALD L. BROOKE
Associate Agricultural
Economists

December 1948

FLORIDA CROP AND LIVESTOCK REPORTING SERVICE,
ORLANDO, FLORIDA

UNITED STATES
DEPARTMENT OF AGRICULTURE
Bureau of Agricultural Economics

UNIVERSITY OF FLORIDA
AGRICULTURAL EXPERIMENT STATION
Department of Agricultural Economics

CITRUS: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1947-48.

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown.

Item	Dade	Fort Pierce
Number of growers	11	22
Number of acres	3857.0	3878.0
Average acres per grower	350.6	167.0
Average yield per acre (1ugs)	155.3	295.6
Growing costs:	**Average per acre**	
Land rent	$ 24.64	$ 15.89
Seed	2.62	4.56
Fertilizer	72.07	85.29
Spray and dust	30.45	39.69
Airplane application	.24 1/	6.04 1/
Cultural labor	100.27	112.51
Machine hire	1.24 2/	29.42 2/
Mule feed	1.43 3/	2.34 3/
Gas, oil and grease	13.17	20.02
Repair and maintenance	17.84	12.76
Depreciation	18.01	21.06
Taxes, licenses and insurance	5.28	3.74
Interest on production capital (6% - 5 mos.)	3.87	8.60
Interest on capital invested (other than land)	2.25	2.56
Miscellaneous expense	8.52 4/	6.10 4/
Total growing cost	$ 305.90	$ 376.13
Harvesting costs:		
Picking labor	$ 33.51	$ 96.05
Grade and pack labor	63.36	
Containers	58.47	
Hauling	6.32	23.34
Commission	14.06	6.83
Total harvesting cost	$ 175.72	$ 126.20
Total crop cost	$ 481.62	$ 502.33
Crop sales	$ 525.62	$ 742.50
Net return	$ 44.00	$ 240.17

1/ Reported by 2 and 16 growers averaging $1.80 and $8.30 per acre, respectively.
2/ Reported by 2 and 21 growers averaging $.84 and $31.02 per acre, respectively.
3/ Reported by 5 and 7 growers averaging $3.14 and $7.35 per acre, respectively.
4/ Reported by 9 and 14 growers averaging $1.39 and $18.41 per acre, respectively.

[illegible] AND FARMERS' PRICES IN SELECTED AREAS [illegible] FLA., SEASON 1947-48.

[illegible] shown below are compiled by the Florida Agricultural Experiment Stations. [illegible] based on grower records for 1947/48 and are averages of the samples shown.

Item	Manatee-Austin	
	Started	Matured
[illegible] of growers	12	8
[illegible] of acres	1447.0	83.5
[illegible] acres per grower	120.6	6.5
[illegible] yield per acre (lugs)	463.3	282.9
[illegible] costs:	Average per acre	
[illegible] rent	$ 30.62	$ 19.44
[illegible]	12.80	9.77
[illegible]ilizer	97.17	50.69
[illegible] dust	55.87	33.21
[illegible] labor	197.40	114.44
[illegible] hire	8.15 1/	6.12 1/
[illegible]	8.44 2/	10.39
[illegible] oil and grease	25.96	11.22
[illegible]ir and maintenance	18.89	15.67
[illegible]	20.72	14.46
[illegible] taxes and insurance	4.64	1.84
[illegible] cost on production capital (6% - 5 mos.)	11.54	7.21
[illegible] cost on capital invested (other than land)	2.88	1.81
[illegible]cellaneous expense	4.84 3/	
[illegible] growing cost	$ 499.70	$ 311.67
[illegible]sting costs:		
[illegible]hine labor	$ 107.82	$ 46.85
[illegible]de and pick labor	185.88	[illegible]
[illegible]ainers	140.98	[illegible]
[illegible]ling	21.32	5.77
[illegible]mission	46.71	7.05
[illegible] harvesting cost	$ 502.71	$ 59.55
[illegible] crop cost	$ 1002.41	$ 371.30
[illegible] sales	$ 1282.03	$ 505.39
[illegible] turn	$ 279.62	$ 134.09

[illegible]ported by 8 and 5 growers averaging $12.22 and $11.02 per acre, respectively.
[illegible]ported by 10 growers averaging [illegible].72 per acre.
[illegible]ported by 5 growers averaging $11.54 per acre.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1949

Volume V

ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

PRODUCTION COSTS

Prepared By

J. B. OWENS
Truck Crop Statistician

G. N. ROSE
and

J. C. TOWNSEND, JR
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DONALD L. BROOKE
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Economist

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Department of Agricultural Economics

TOMATOES: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1948-49

(The figures shown below are compiled by the Florida Agricultural Experiment Station. They are based on grower records and estimates and are averages of the samples shown.)

Item	Dade	Fort Pierce
Number of growers	18	24
Number of acres	5208.5	5912.0
Average acres per grower	289.4	246.3
Average yield per acre (bushels)	212.8	208.8
Growing costs:	Average per acre	
Land rent	$ 29.88	$ 14.54
Seed	3.96	4.21
Fertilizer	73.64	81.32
Spray and dust	29.35	29.74
Airplane application		1.66 1/
Cultural labor	95.59	96.09
Machine hire	2.78 2/	23.99 2/
Mule feed		.63 3/
Gas, oil and grease	13.80	19.28
Repair and maintenance	18.90	22.59
Depreciation	13.07	18.64
Licenses and insurance	3.87	2.65
Interest on production capital (6% - 5 mos.)	6.96	7.57
Interest on capital invested (other than land)	1.63	2.33
Miscellaneous expense	6.61 4/	6.10 4/
Total growing cost	$ 300.04	$ 331.34
Harvesting costs:		
Picking labor	$ 88.78	$ 105.59
Grading and packing labor	46.96 5/	15.38 5/
Containers	46.36 6/	15.67 6/
Hauling	16.35	27.32
Commission	21.71	18.87
Total harvesting cost	$ 220.16	$ 182.83
Total crop cost	$ 520.20	$ 514.17
Crop sales	$ 928.96	$ 702.32
Net return	$ 408.76	$ 188.15

1/ Reported by 10 growers averaging $3.98 per acre.
2/ Reported by 7 and 22 growers averaging $7.15 and $26.17 per acre, respectively.
3/ Reported by 7 growers averaging $2.16 per acre.
4/ Reported by 15 and 14 growers averaging $7.93 and $10.46 per acre, respectively.
5/ Reported by 9 and 4 growers averaging $93.92 and $92.30 per acre, respectively.
6/ Reported by 9 and 4 growers averaging $92.72 and $94.01 per acre, respectively.

[illegible]

[illegible] Agricultural Experiment Station
[illegible] on grower records for the year [illegible] (Triangle of the Purple Sherry)

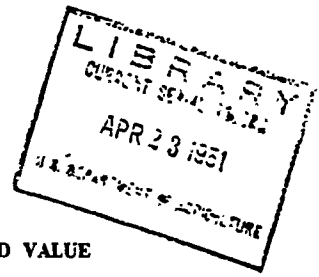
Item	[illegible]	Western Counties	Eastern
[illegible] growers	13	8	14
[illegible] acres	1,747.0	84.0	24.2
[illegible] per grower	97.3	23.7	1.7
[illegible] per acre (trees)	139.4	170.8	144.6
Cash Costs:		Average per acre	
[illegible] rent	$ 28.02	$ 21.43	$ 32.14
Seed and seeding	10.28	10.30	6.05
Fertilizer	87.12	61.65	30.30
Spray and dust	34.40	31.80	29.37
Pruning labor	183.55	83.63	85.22
Machine hire	7.71 1/	5.71 1/	8.16 1/
Tree feed	8.55 2/	8.27 2/	17.23 2/
Fuel, oil and grease	26.47	21.82	20.50
Repairs and maintenance	22.39	19.43	20.14
Irrigation	21.64	7.80	21.21
Taxes and insurance	7.97	1.7	6.31
Interest on [illegible] for capital (6% - 5 mos.)	10.51	3.	7.7
Interest on capital [illegible]ted(other than land)	2.67	1.	2.3
Miscellaneous expense	3.25 3/	2.17 3/	2.37 3/
Total growing cost	$ 454.81	$ 288.25	$ 330.45
Harvesting costs:			
Picking labor	$ 51.70	$ 19.62	$ 49.55
Sorting and packing labor	1.7.24 4/		
Boxes	130.84 5/		
Hauling	42.80	7.75	10.47
Commission	40.48	15.26	7.23
Total harvesting cost	$ 377.56	$ 111.63	$ 67.25
Total crop cost	$ 832.37	$ 399.88	$ 397.68
Crop sales	$ 865.05	$ 554.72	$ 518.04
Net return	$ 32.69	$ 155.83	$ 120.36

1/ Reported by 15, 4, and 10 growers averaging $11.08, $14.76, and $11.45 per acre, respectively.
2/ Reported by 20 and 4 growers averaging $6.95 and $10.01 per acre, respectively.
3/ Reported by 11, 1, and 7 growers averaging $6.24, $1.00, and $16.74 per acre, respectively.
4/ Reported by 21 and 10 growers averaging $124.02 and $157.65 per acre, respectively.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1950



Volume VI

ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

PRODUCTION COSTS

Prepared By

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CITRUS: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 19[illegible]

The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown.

Item	Dade	Fort Pierce	Wauchula	Immokalee
Number of growers	18	16	16	12
Number of acres	5026.0	5905.0	35.0	1593.0
Average acres per grower	279.2	369.1	2.2	132.8
Average yield per acre (bushels)	223.6	157.6	156.6	197.2
Growing costs:		Average per acre		
Land rent	$ 30.43	$ 13.39	$ 9.81	$ 8.42
Seed	4.98	4.25	4.69	3.64
Fertilizer	74.20	74.53	48.56	65.40
Side dressing and lime	--	--	8.45 1/	--
Spray and dust	25.46	25.23	17.30	25.43
Airplane application	.41	.78 2/	--	1.33 2/
Cultural labor	79.91	104.22	85.15	58.19
Machine hire	1.15 3/	24.35 3/	9.19 3/	12.58 3/
Mule feed	[illegible]	[illegible]	7.07 4/	1.67 4/
Gas, oil and grease	14.51	20.92	17.28	16.55
Repair and maintenance	14.58	24.50	10.70	15.20
Depreciation	17.14	20.65	20.48	15.76
Licenses and insurance	4.56	3.24	4.88	2.79
Interest on production capital (6% - 5 mos.)	6.35	7.53	5.58	5.38
Interest on capital invested (other than land)	2.14	2.56	2.70	1.67
Miscellaneous expense	3.41 5/	5.89 5/	2.38 5/	3.30 5/
Total growing cost	$ 278.80	$ 332.08	$ 251.98	$ 237.61
Harvesting costs:				
Picking labor	$ 94.76	$ 67.19	$ 66.52	$ 85.95
Grading and packing labor	86.18 6/			112.09
Containers	31.71 7/			89.09 7/
Hauling	17.27	24.05	14.93	21.46
Commission	19.11	12.18	6.27	31.17
Total harvesting cost	$ 204.99	$ 103.42	$ 87.82	$ 347.76
Total crop cost	$ 483.79	$ 435.50	$ 339.80	$ 585.17
Crop sales	$ 600.53	$ 553.23	$ 413.93	$ 643.95
Net return	$ 116.74	$ 117.73	$ 74.13	$ 61.78

1/ Reported by 10 growers averaging [illegible] per acre.
2/ Reported by 2 and 4 growers averaging $6.28 and $4.00 per acre, respectively.
3/ Reported by 5, 14, 10, and 10 growers averaging $4.12, $27.83, $14.70, and $15.01 per acre, respectively.
4/ Reported by 12 and 5 growers averaging $8.43 and $6.59 per acre, respectively.
5/ Reported by 11, 14, 12, and 10 growers averaging $5.78, $6.73, $3.09, and $3.90 per acre, respectively.
6/ Reported by 9 growers averaging $76.30 per acre.
7/ Reported by 8 and 11 growers averaging $71.38 and $[illegible].06 per acre respectively.

[illegible]

[illegible] figures shown below are compiled by the Florida Agricultural Experiment [illegible] are based on grower records and [illegible] are averages of the [illegible]

Item	Size class	Medium	Large
Number of growers	10	13	17
Number of acres	216.6	1526.0	59.5
Average acres per grower	21.6	117.4	[illegible]
Average yield per acre (bushels)	103.5	260.7	164.[illegible]
Growing costs:		Average per acre	
Land rent	$ 19.00	$ 32.87	$ 38.59
Seed	6.25	7.53	5.77
Fertilizer	59.63	86.00	47.42
Side-dressing			2.53 1/
Spray and dust	24.01	24.17	21.38
Irrigation labor	71.00	137.89	80.11
Tractor hire	3.20 2/	3.70 2/	2.77 1/
Fuel and oil	6.98 3/	2.70 3/	11.61
Gas, oil and grease	13.41	23.40	15.63
Repair and maintenance	12.38	25.63	10.79
Depreciation	14.34	22.52	30.04
Interest and insurance	2.68	[illegible]	4.37
Interest on production capital (6 - 6 mos.)	5.72	[illegible]	8.35
Interest of capital invested (other than land)	1.79	[illegible]	3.79
Miscellaneous expense	1.96 4/	8.74	11.42 4/
Total growing cost	$ 250.93	$ 418.36	$ 302.52
Harvesting costs:			
Picking labor	$ 61.95	$ 118.72	$ 73.62
Grading and packing labor		141.64	
Containers		132.55	
Hauling	8.22	20.37	16.12
Commission	7.45	36.56	8.05
Total harvesting cost	$ 77.30	$ 480.32	$ 102.80
Total crop cost	$ 328.53	$ 893.67	$ 405.32
Crop sales	$ 334.32	$ 794.04	$ 498.57
Net return	$ 5.79	$ -99.55	$ 93.25

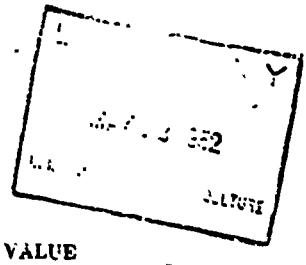
1/ Reported by 5 growers averaging 7.54 per acre.
2/ Reported by 6, 8, and 13 growers averaging 15.53, 26.02, and 15.12 per acre, respectively.
3/ Reported by 7 growers averaging 6.97 and 5.01 per acre, respectively.
4/ Reported by 9 and 15 growers averaging 12.18 and 11.21 per acre, respectively.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1951

Volume VII



ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

PRODUCTION COSTS

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TOMATOES: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1950-51

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown.)

Item	Manatee-Ruskin		Immokalee	Fort Myers
	Staked	Unstaked		
Number of growers	17	5	13	5
Number of acres	1781.5	206.0	1977.0	80.0
Average acres per grower	104.8	41.2	152.1	16.0
Average yield per acre	255.6	175.4	167.2	210.0
Growing costs:	Average per acre			
Land rent	$ 38.59	$ 35.00	$ 8.23	$ 22.55
Seed	7.33	4.90	3.44	4.94
Fertilizer	90.84	81.46	78.30	76.07
Spray and dust	38.58	29.80	38.40	39.52
Airplane application			5.46	
Cultural labor	270.73	206.41	78.48	57.18
Machine hire	6.43 1/	19.97 1/	6.39 1/	1.71 1/
Mule feed	7.45 2/	6.71 2/	1.00 2/	1.37 2/
Gas, oil and grease	29.04	20.31	17.33	16.12
Repair and maintenance	26.33	15.12	11.13	7.98
Depreciation	37.42	12.79	15.27	33.09
Licenses and insurance	7.35	3.11	2.46	4.66
Interest on production capital (6% - 5 mos.)	13.48	10.73	6.41	6.01
Interest on capital invested (other than land)	22.45	7.67	9.16	19.86
Miscellaneous expense	16.63	6.55	5.91	8.40
Total growing cost	$ 612.65	$ 460.53	$ 287.37	$ 299.46
Harvesting costs:				
Picking labor	$ 110.14	$ 70.65	$ 87.24	$ 100.00
Grading and packing labor	164.90		141.62	109.39 3/
Containers	55.13		61.74	53.37 4/
Hauling	19.27	13.27	17.13	17.60 5/
Commission	40.31	44.58	23.23 6/	25.74 6/
Total harvesting cost	$ 389.75	$ 128.50	$ 330.96	$ 306.10
Total crop cost	$1002.40	$ 589.03	$ 618.33	$ 605.56
Crop sales	$1050.07	$ 657.71	$ 513.63	$ 721.80
Net return	$ 47.67	$ 68.68	$-104.70	$ 116.24

1/ Reported by 9, 4, 9 and 1 growers averaging $12.14, $24.96, $9.24 and $8.54 per acre, respectively.
2/ Reported by 13, 4, 5 and 1 growers averaging $9.74, $8.38, $2.61 and $6.86 per acre, respectively.
3/ Reported by 4 growers averaging $136.74 per acre.
4/ Reported by 4 growers averaging $ 66.72 per acre.
5/ Reported by 4 growers averaging $ 22.00 per acre.
6/ Reported by 11 and 4 growers averaging $27.45 and $32.17 per acre, respectively.

[illegible] UNITED STATES [illegible]

[illegible] figures shown [illegible] by the Florida Agricultural Experiment [illegible] are based on [illegible] estimates and are [illegible] of the samples [illegible]

Item	Sumter	Lake Hamilton	Dade	Manatee
Number of growers	18	26	13	11
Number of acres	91.3	7083.0	3756.0	42.5
Average acres per grower	5.1	111.1	289.7	3.8
Average yield per acre (bushels)	187.6	135.9	163.8	145.4
Grove costs:		Average per acre		
Land rent	$ 32.27	$ 12.06	$ 31.98	$ 18.00
Seed	5.00	4.70	2.39	4.53
Fertilizer	67.49	69.81	75.31	99.51
Spray and dust	20.16	29.37	40.23	25.32
Airplane application	3.82 1/	.70 1/		
Cultural labor	99.88	102.20	99.09	163.10
Machine hire	5.71 2/	21.52	.50 3/	13.72 3/
Grove feed	3.63 3/	.20 3/		18.35 3/
Gas, oil and grease	21.89	22.21	21.53	35.84
Repair and maintenance	12.24	29.89	18.12	15.26
Depreciation	32.75	22.95 4/	14.18	24.15
Licenses and insurance	3.44	4.58	3.09	13.14
Interest on production capital ($3 - 5 mos.)	7.02	7.52	7.80	9.32
Interest on capital invested (other than land)	19.65	13.77	6.51	14.49
Miscellaneous expense	.27 5/	7.11 5/	5.31	
Total growing cost	$ 340.22	$ 348.05	$ 317.83	$ 441.23
Harvesting costs:				
Picking labor	$ 136.29	$ 63.67	$ 71.02	$ 68.67
Grading and packing labor			56.22 6/	
Containers			38.67 6/	
Hauling	1.35 7/	28.48	3.45 7/	5.77 7/
Commission	12.46	1.48 8/	13.18 8/	5.04 8/
Total harvesting cost	$ 150.10	$ 93.63	$ 182.54	$ 79.68
Total crop cost	$ 490.32	$ 441.69	$ 500.37	$ 520.91
Crop sales	$ 479.61	$ 478.41	$ 750.72	$ 450.68
Net returns	$ -10.71	$ 36.72	$ 250.35	$ -70.23

1/ Reported by 8 and 3 growers averaging $8.59 and $3.72 per acre, respectively.
2/ Reported by 11, 2 and 9 growers averaging $9.35, $3.22 and $16.77 per acre, respectively.
3/ Reported by 12, 2 and 7 growers averaging $12.94, $1.62 and $22.55 per acre, respectively.
4/ Reported by 2 and 12 growers averaging $2.38 and $9.49 per acre, respectively.
5/ Reported by 11 growers averaging $66.44 per acre.
6/ Reported by 8 growers averaging $62.84 per acre.
7/ Reported by 6, 4 and 3 growers averaging $13.07, $14.21 and $21.17 per acre, respectively.
8/ Reported by 4, 5 and 6 growers averaging $5.93, $19.04 and $9.23 per acre, respectively.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1952

Volume VIII

ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

PRODUCTION COSTS

Prepared By

J. B. OWENS
Truck Crop Statistician

G. N. ROSE
and

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... Florida and Florida Per Acre Investment Costs and Returns, Season 1951-52

... figures shown below are compiled by the Florida Agricultural Experiment Stations, ... are based on grower records and estimates and are averages of the samples shown.)

Item	Manatee-Hardin Staked	Manatee-Hardin Unstaked	Sumter	Tauchula
Number of growers	19	6	19	22
Number of acres	2445.0	299.5	85.8	218.5
Average acres per grower	128.7	49.9	4.5	9.9
Average yield per acre (bushels)	211.4	193.7	118.8	232.0
Growing costs:		Averages per acre		
Land rent	$ 38.01	$ 31.67	$ 25.79	$ 13.20
Seed	6.60	3.22	4.67	5.93
Fertilizer	108.08	79.15	63.46	90.53
Spray and dust	46.68	37.19	31.02	42.14
Airplane application			2.33 1/	2.05 1/
Cultural labor	263.42	217.47	87.05	152.27
Machine hire	7.89 2/	13.05 2/	3.69 2/	18.25 2/
Mule feed	4.27 3/	7.30 3/	6.59 3/	
Gas, oil and grease	27.60	17.17	15.47	19.37
Repair and maintenance	32.76	33.60	8.41	13.52
Depreciation	34.77	20.03	32.64	32.18
Licenses and insurance	8.82	8.44	4.50	4.56
Interest on production capital (6% - 5 mos.)	14.05	8.62	6.38	9.09
Interest on capital invested (other than land)	20.86	12.02	19.58	19.31
Miscellaneous expense	17.73	26.70	2.14	1.92
Total growing cost	$ 631.53	$ 385.66	$ 313.72	$ 424.32
Harvesting costs:				
Picking labor	$ 107.07	$ 67.62	$ 48.74	$ 147.12
Grading and packing labor	131.41	119.57		
Containers	108.53	68.03		
Hauling	17.56	10.36	14.81	32.30
Commission	36.40	31.77	7.86	9.47
Total harvesting cost	$ 400.97	$ 317.40	$ 71.41	$ 188.89
Total crop cost	$1032.50	$ 703.06	$ 385.13	$ 613.21
Crop sales	$ 951.93	$ 795.99	$ 300.41	$ 653.02
Net return	$ -80.57	$ 92.93	$ -84.72	$ 39.81

1/ Reported by 11 and 8 growers averaging $4.02 and $5.62 per acre, respectively.
2/ Reported by 15, 2, 8 and 19 growers averaging $9.99, $9.15, $3.75 and $21.13 per acre, respectively.
3/ Reported by 13, 3 and 17 growers averaging $6.24, $14.61 and $7.37 per acre, respectively.

[illegible] labor are reported by the Florida Agricultural Experiment Stat[illegible] on grower records and interviews and are averages of the samples sh[illegible]

Item	Dade	Polk	Manatee
Number of growers	12	18	15
Number of acres	5135.0	6564.0	3329.0
Average acres per grower	432.9	364.7	208.0
Average yield per acre (bushels)	258.5	189.8	28[illegible]
Growing costs:		Average per acre	
Land rent	$ 28.57	$ 14.87	$ 7.99
Seed	2.61	3.55	4.06
Fertilizer	62.29	77.55	81.13
Spray and dust	38.04	38.38	54.28
Airplane application		2.50 1/	.79 1/
Cultural labor	80.71	102.78	57.77
Machine hire	4.12 2/	31.38 2/	14.17 2/
Gas, oil and grease	13.08	19.46	14.91
Repair and maintenance	20.49	27.65	13.24
Depreciation	16.18	19.57	13.33
Licenses and insurance	5.12	4.36	2.48
Interest on production capital (6% - 5 mos.)	7.12	8.23	6.67
Interest on capital invested (other than land)	9.70	11.74	8.00
Miscellaneous expense	9.98	6.53	6.06
Total growing cost	$ 318.01	$ 368.85	$ 294.63
Harvesting costs:			
Picking labor	$ 86.37	$ 102.15	$ 106.34
Grading and packing labor	85.71		107.41
Containers	52.47		95.88
Hauling	8.89	29.73	19.37
Commission	23.51	25.60	29.61
Total harvesting cost	$ 256.95	$ 157.48	$ 358.61
Total crop cost	$ 574.96	$ 526.33	$ 653.49
Crop sales	$ 515.71	$ 715.41	$ 818.93
Net return	$ -59.25	$ 189.08	$ 165.44

1/ Reported by 9 and 3 growers averaging $5.01 and $4.20 per acre, respectively.
2/ Reported by 7, 17 and 15 growers averaging $7.06, $33.23 and $15.11 per acre, respectively.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1953

Volume IX

ACREAGE, PRODUCTION AND VALUE
CARLOT SHIPMENTS
PRODUCTION COSTS

Prepared By

J. B. OWENS
Truck Crop Statistician

J. C. TOWNSEND, Jr.
Agricultural Statistician
In Charge

G. N. ROSE
CLYAS CRENSHAW
and
DONALD L. BROOKE
Agricultural Experiment Station
University of Florida

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Department of Agricultural Economics

TOMATOES: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1952-53

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown.)

Item	Manatee-Hushin		Sumter	Wauchula
	Staked	Unstaked		
Number of growers	12	6	11	19
Number of acres	1575.0	426.0	23.0	283.8
Average acres per grower	131.2	71.0	2.5	14.9
Average yield per acre (bushels)	194.0	191.0	198.0	221.0
Growing costs:		Average per acre		
Land rent	$ 32.10	$ 29.92	$ 25.45	$ 14.08
Seed	8.79	8.16	5.54	6.35
Fertilizer	98.62	93.55	67.26	74.18
Spray and dust	43.39	40.84	34.04	37.05
Airplane application				2.50 1/
Cultural labor	262.05	125.19	37.85	75.35
Machine hire	11.40 2/	17.16 2/	3.93 2/	6.78 2/
Mule feed			5.29 3/	
Gas, oil and grease	30.36	20.27	11.86	13.74
Repair and maintenance	31.90	22.58	7.63	10.53
Depreciation	32.83	17.25	25.11	19.56
Licenses and insurance	11.48	5.31	4.13	3.42
Interest on production capital (6% - 5 mos.)	13.58	9.23	5.12	6.20
Interest on capital invested (other than land)	19.70	10.35	15.07	11.74
Miscellaneous expense	12.88	6.32	1.74	4.20
Total growing cost	$ 609.08	$ 406.13	$ 250.02	$ 285.68
Harvesting costs:				
Picking labor	$ 84.82	$ 89.88	$ 107.44	$ 126.53
Grading and packing labor	145.41	134.07		
Containers	59.66	82.55		
Hauling	19.93	24.45	24.13	26.31
Commission	24.15	29.86	9.89	10.59
Total harvesting cost	$ 333.97	$ 360.81	$ 141.46	$ 163.43
Total crop cost	$ 943.05	$ 766.94	$ 391.48	$ 449.11
Crop sales	$ 645.86	$ 617.44	$ 785.43	$ 638.29
Net return	$-297.19	$-149.50	$ 393.95	$ 189.18

1/ Reported by 7 growers averaging $6.78 per acre.
2/ Reported by 10, 5, 5 and 12 growers averaging $13.68, $20.60, $8.65 and $10.74 per acre, respectively.
3/ Reported by 7 growers averaging $8.31 per acre.

[illegible]

The [illegible] shown below were compiled by the Florida Agricultural Experiment Station [illegible] They are based on grower records and are averages of the sample shown.

Item	Irr.	Irr. Fairs	Intermed.
Number of growers	13	15	22
Number of acres	7215.0	8691.0	3737.0
Average acres per grower	555.0	578.7	169.9
Average yield per acre (bushels)	118.0	156.0	115.0
Growing costs:		Average per acre	
Land rent	$ 36.44	$ 11.99	$ 9.92
Seed	4.26	3.69	5.12
Fertilizer	97.06	77.18	55.75
Spray and dust	40.57	33.11	56.72
Airplane application	1.36 1/	.75 1/	1.17 1/
Cultural labor	118.74	108.30	82.12
Machine hire	7.25 2/	17.86 2/	17.23 2/
Gas, oil and grease	13.81	20.61	15.86
Repair and maintenance	21.14	32.92	12.75
Depreciation	20.17	19.37	13.93
Fitness and insurance	7.21	7.12	3.14
Interest on production capital (6% - 5 mos.)	6.96	8.10	7.53
Interest on capital invested (other than land)	12.10	11.82	8.39
Miscellaneous expense	10.44	6.96	3.09
Total growing cost	$ 399.51	$ 382.97	$ 333.17
Harvesting costs:			
Picking labor	$ 66.91	$ 83.11	$ 63.36
Grading and packing labor	74.72	94.94	60.28
Containers	51.57	57.26	46.37
Hauling	9.89	26.31	13.97
Commission	19.83	19.61	17.87
Total harvesting cost	$ 222.92	$ 281.23	$ 202.35
Total crop cost	$ 622.43	$ 664.20	$ 535.52
Crop sales	$ 595.54	$ 568.06	$ 480.02
Net return	$ -26.89	$ -76.14	$ -55.50

1/ Reported by 4, 4 and 5 growers averaging $6.10, $2.82 and $5.14 per acre, respectively.

2/ Reported by 10, 12 and 19 growers averaging $13.04, $22.14 and $20.01 per acre, respectively.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1954

Volume X

ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

PRODUCTION COSTS

Prepared By

J. B. OWENS
Truck Crop Statistician

J. C. TOWNSEND, JR.
Agricultural Statistician
In Charge

G. N. ROSE
C. L. CRENSHAW
and
DONALD L. BROOKE
Agricultural Experiment Stations
University of Florida

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TOMATOES: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1953-54

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown).

Item	Dade	Fort Pierce	Manatee-Ruskin	
			Staked	Unstaked
Number of growers	20	11	11	8
Number of acres	8387.7	5408.0	1197.0	210.0
Average acres per grower	419.4	491.6	108.8	70.0
Average yield per acre (bushels)	187.6	142.8	226.6	86.3
Growing costs:		Average per acre		
Land rent	$ 32.26	$ 13.12	$ 30.41	$ 30.00
Seed	4.30	13.58	9.85	6.83
Fertilizer	85.18	71.70	92.75	69.86
Spray and dust	38.56	34.37	44.83	36.10
Airplane application		1.85		
Cultural labor	93.04	108.71	273.47	75.43
Machine hire	1/ 3.05	23.01	2/ 5.40	2/ 8.66
Gas, oil and grease	13.97	27.67	23.11	19.15
Repair and maintenance	20.98	42.65	26.30	19.24
Depreciation	20.36	22.74	31.91	13.39
Licenses and insurance	5.52	5.65	6.68	2.32
Interest on production capital (6% - 5 mos.)	7.92	6.73	13.06	6.83
Interest on capital invested (other than land)	12.21	11.64	19.15	8.04
Miscellaneous expense	10.01	9.23	10.07	5.76
Total growing cost	$ 357.36	$ 394.25	$ 665.69	$ 301.54
Harvesting costs:				
[illegible] labor	$ 88.44	$ 64.71	$ 125.86	$ 82.13
[illegible] and grading labor	101.04	75.09	153.47	63.37
[illegible]	66.95	65.31	114.82	41.91
Packing	10.81	16.56	20.26	8.64
Containers	20.21	20.37	33.91	14.33
Total harvesting cost	$ 287.43	$ 244.03	$ 448.32	$ 209.38
Total crop cost	$ 644.79	$ 638.28	$ 1084.68	$ 510.92
Crop value	$ 587.30	$ 528.36	$ 816.59	$ 252.66
Net return	$ -57.49	$ -110.09	$ -219.09	$ -258.06

1/ Reported by 7 growers averaging $10.18 per acre.

2/ Reported by 5,6,8 and 2 growers averaging $10.16, $31.64, $7.43 and $12.84 per acre, respectively.

[illegible] COSTS AND RETURNS PER ACRE ON CITRUS GROVES [illegible] 1953-54

(The figures shown below are compiled by the Florida Agricultural Extension Service. They are based on grower records and estimates and are averages of the crop [illegible].)

Item	Hendry 1/	Collier	Lee 2/	Average
Number of growers	17	13	12	13
Number of acres	3160.0	174.0	35.5	170.8
Average acres per grower	185.9	13.4	3.0	9.8
Average yield per acre (bushels)	179.2	425.2	104.7	302.4
Growing costs:		Average per acre		
Land rent	$ 8.54	$ 8.56	$ 21.67	$ 8.83
Seed	5.00	3.54	6.31	5.[illegible]
Fertilizer	84.91	61.80	65.20	80.[illegible]
Spray and dust materials	37.32	23.83	32.98	45.[illegible]
Chemical application	3/ 1.03			1/ 2.35
Cultural labor	54.51	33.60	36.46	[illegible]
Machine hire	2/ 13.98	2/ 1.62	2/ 3.27	2/ [illegible]
Bulk feed			3/ 4.20	
Gas, oil and grease	12.51	7.50	[illegible]	[illegible]
Repair and maintenance	10.14	[illegible]	[illegible]	[illegible]
Depreciation	10.43	[illegible]	[illegible]	[illegible]
Licenses and insurance	2.35	1.75	4.35	3.[illegible]
Interest on production capital (6% - 5 mos.)	5.80	3.77	4.99	[illegible]
Interest on capital invested (other than land)	8.26	5.10	11.30	11.[illegible]
Miscellaneous expense	3.49	2.39	3.15	5.02
Total growing cost	$ 254.56	$ 163.21	$ 234.80	$ 311.64
Harvesting costs:				
Picking labor	$ 96.79	$ 129.79	$ 47.05	$ [illegible]
Hauling and packing labor	100.53			
Containers	65.61			
Hauling	17.56	15.15	8.66	16.55
Commission	25.57	13.39	6.83	7.21
Total harvesting cost	$ 306.06	$ 158.31	$ 62.54	$ 114.09
Total crop cost	$ 560.62	$ 330.52	$ 297.04	$ 425.92
Crop sales	$ 432.63	$ 489.08	$ 180.92	$ 522.16
Net return	$ -120.99	$ 158.56	$ -116.12	$ 96.26

1/ Reported by 4 and 9 growers averaging $5.56 and $4.70 per acre, respectively.

2/ Reported by 15, 8, 6 and 13 growers averaging $15.65, $3.52, $6.54 and $20.48 per acre, respectively.

3/ Reported by 5 growers averaging $10.14 per acre.

4/ Webster section.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1955

Volume XI

ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

PRODUCTION COSTS

Prepared By

J. B. OWENS
Truck Crop Statistician

J. C. TOWNSEND, JR.
Agricultural Statistician
In Charge

G. N. ROSE
C. L. CRENSHAW
and
DONALD L. BROOKS
Agricultural Experiment Station
University of Florida

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Department of Agricultural Economics

[illegible]: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1934-35

The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown).

Table 2.

Item	Lake	Fort Pierce	Immokalee
Number of growers	15	11	13
Number of acres	9399.0	4677.0	2326.0
Average acres per grower	626.6	425.2	178.9
Average yield per acre (bushels)	281.5	185.6	207.8
Growing costs:		Average per acre	
Land rent	$ 30.68	$ 13.40	$ 10.69
Seed	4.02	4.00	5.02
Fertilizer	94.31	76.42	78.63
Spray and dust	38.23	35.38	41.92
Airplane application	1/ .17	1/ .61	1/ .40
Cultural labor	125.46	103.85	74.96
Machine hire	2/ 1.19	2/ 32.69	2/ 16.37
Gas, oil and grease	14.41	24.48	18.19
Repair and maintenance	24.25	34.84	19.23
Depreciation	19.04	19.44	15.75
Licenses and insurance	8.80	6.07	4.32
Interest on production capital (6% - 5 mos.)	8.95	8.57	8.69
Interest on capital invested (other than land)	11.43	11.67	9.45
Miscellaneous expense	16.61	9.[illegible]	5.99
Total growing cost	$ 397.55	$ 3[illegible].[illegible]	309.60
Harvesting costs:			
Picking labor	$ 121.76	$ 84.36	$ 92.33
Hauling and packing	118.98	85.81	89.14
[illegible]	94.64	75.58	81.90
[illegible]	17.07	24.36	23.42
[illegible]	37.15	24.27	24.82
Total harvesting cost	$ 389.60	$ 294.08	$ 321.61
Crop cost	$ 787.15	$ 678.40	$ 629.41
Sales	$ 993.38	$ 670.05	$ 621.06
Return	$ 206.23	$ -0.35	$ -8.35

1/ Reported by 3, 3 and 2 growers averaging $0.83, $2.24 and $2.53 per acre, respectively.

2/ Reported by 6, 10, and 10 growers averaging $2.98, $[illegible].[illegible] and $21.28 per acre, respectively.

[illegible] COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1954-55

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown).

Item	Manatee-Pushin Sieved	Sumter	Hardee
Number of growers	13	11	16
Number of acres	1929.0	23.2	160.0
Average acres per grower	148.4	2.1	10.0
Average yield per acre (bushels)	290.1	215.3	227.4
Growing costs:		Average per acre	
Land rent	$ 32.31	$ 24.54	$ 10.32
Seed	7.38	7.80	8.61
Fertilizer	85.07	57.18	54.61
Spray and dust	42.95	22.00	38.75
Chemical application			1/ .55
Cultural labor	277.56	33.54	73.58
Machine hire	2/ 9.22	2/ 2.04	2/15.72
Gas, oil and grease	27.41	17.87	19.05
Repair and maintenance	27.21	9.20	11.85
Depreciation	30.80	15.03	19.44
Taxes and insurance	10.22	5.50	4.50
Interest on production capital (6% - 5 mos.)	13.45	4.64	8.79
Interest on capital invested (other than land)	18.48	11.42	10.70
Miscellaneous expense	19.72	5.72	5.14
Total growing cost	$ 600.76	$ 220.58	$ 307.45
Harvesting costs:			
Picking	$ 135.96	$ 101.58	$ 115.50
Grading and packing	193.83		
Containers	148.72		
Hauling	24.30	19.02	19.18
Commission	52.66	13.31	10.67
Total harvesting cost	$ 555.47	$ 133.91	$ 145.35
Total crop cost	$ 1156.23	$ 354.49	$ 452.80
Crop sales	$ 1023.56	$ 350.80	$ 437.92
Net return	$ -132.67	$ -3.69	$ -14.88

1/ Reported by 3 growers averaging $3.00 per acre.

2/ Reported by 12, 3 and 13 growers averaging $9.99, $7.50 and $19.35 per acre, respectively.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1956

Volume XII

ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

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Prepared By

J. B. OWENS
Truck Crop Statistician

J. C. TOWNSEND, JR.
Agricultural Statistician
In Charge

G. N. ROSE
C. L. CRENSHAW
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DONALD L. BROOKE
Agricultural Experiment Stations
University of Florida

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CITRUS: COSTS AND RETURNS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1938-39

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown).

Item	Dade	Fort Pierce	Immokalee
Number of growers	16	11	13
Number of acres	14028.0	6060.0	2764.0
Average acres per grower	876.7	550.9	212.6
Average yield per acre (bushels)	185.0	208.1	178.3
Growing costs:	**Average per acre**		
Land rent	$ 24.38	$ 9.83	$ 10.60
Seed	4.75	3.88	5.21
Fertilizer	100.78	63.89	71.85
Spray and dust	45.38	32.01	33.91
Airplane application			1/ .48
Cultural labor	108.90	105.07	87.88
Machine hire	2/ 7.46	32.71	2/ 12.88
Gas, oil and grease	14.25	22.45	15.38
Repair and maintenance	27.04	33.32	12.76
Depreciation	17.22	15.55	12.81
Licenses and insurance	6.65	8.88	3.22
Interest on production capital (6% - 5 mos.)	5.06	8.61	5.75
Interest on capital invested (other than land)	5.17	4.88	3.84
Miscellaneous expense	12.92	14.38	6.54
Total growing cost	$ 393.86	$ 373.29	252.61
Harvesting Costs:			
Picking labor	$ 77.27	$ 93.06	$ 81.55
Grading and packing labor	94.52	110.82	54.05
Containers	63.01	82.23	72.04
Hauling	10.60	28.40	22.22
Commission	24.94	23.28	25.84
Total harvesting cost	$ 270.34	$ 337.99	$ 259.60
Total crop cost	$ 664.20	$ 711.21	$ 552.31
Crop sales	$ 758.51	$ 639.24	$ 483.04
Net return	$ 93.31	$ -71.97	$ -69.27

1/ Reported by 2 growers averaging $3.15 per acre.

2/ Reported by 13 and 12 growers averaging $8.16 and $14.04 per acre, respectively.

[illegible] COSTS AND RETURNS PER ACRE [illegible] [illegible] [illegible]

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown).

Item	Watermelons		Cucumbers	Tomatoes
	Total	Unstaked	Staked	
Number of growers	13	3	9	10
Number of acres	1886.0	200.0	17.2	144.5
Average acres per grower	145.1	66.7	1.9	14.5
Average yield per acre (bushels)	317.0	256.7	177.6	171.4
Growing costs:			Average per acre	
Land rent	$ 32.69	$ 32.60	$ 21.10	$ 13.05
Seed	5.04	5.40	3.79	6.76
Fertilizer	85.60	73.42	76.33	78.22
Spray and dust	42.84	42.15	15.13	38.01
Cultural labor	258.97	100.13	34.99	69.21
Machine hire	1/ 23.42	1/ 6.65	1/ 3.95	1/ 10.47
Gas, oil and grease	30.40	29.02	19.74	18.80
Repair and maintenance	34.21	30.20	11.38	16.90
Depreciation	38.64	34.18	22.00	14.91
Licenses and insurance	12.58	2.45	11.06	4.79
Interest on production capital (6% - 5 mos.)	14.06	8.39	5.30	5.51
Interest on capital invested (other than land)	11.06	7.25	5.60	4.47
Miscellaneous expense	19.81	8.71	5.09	5.43
Total growing cost	$ 624.08	$ 375.60	$ 246.01	$ 278.33
Harvesting costs:				
Picking labor	$ 135.00	$ 116.15	$ 102.45	$ 98.54
Grading and packing labor	289.80	133.70		
Containers	186.84	109.49		
Hauling	32.14	27.46	15.70	14.39
Commission	45.82	32.83	10.99	8.79
Total harvesting cost	$ 571.80	$ 418.62	$ 129.14	$ 121.72
Total crop cost	$ 1195.89	$ 794.22	$ 375.15	$ 405.05
Crop sales	$ 1052.04	$ 813.25	$ 627.48	$ 302.45
Net return	$ -143.85	$ -180.98	$ 252.33	$ -105.60

1/ Reported by 12, 2, 3 and 8 growers averaging 125.37, 89.49, $11.87 and 12.84 per acre, respectively.

FLORIDA

VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1957

Volume XIII

ACREAGE, PRODUCTION AND VALUE

CARLOT SHIPMENTS

PRODUCTION COSTS

Prepared By

J. B. OWENS
Truck Crop Statistician

J. C. TOWNSEND, JR.
Agricultural Statistician
In Charge

C. N. ROSE
Crop Statistician

E. A. [illegible]
Agricultural Economist
University of Florida

FLORIDA CROP AND LIVESTOCK REPORTING SERVICE
ORLANDO, FLORIDA

UNITED STATES
DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service

UNIVERSITY OF FLORIDA
AGRICULTURAL EXPERIMENT STATIONS
Department of Agricultural Economics

63-673 O - 80 - 28

[illegible]

[illegible] shown below are [illegible] by the Florida Agricultural Experiment [illegible] records and estimates [illegible] of the Florida Potato [illegible]

Item	Date	Fort Pierce	Immokalee-Fort Myers	Hastings-Palatka 1/
Number of growers	19	15	11	15
Number of acres	14652.5	4209.0	1833.0	1727.5
Acres per grower	707.0	700.6	166.4	115.2
Acre yield per acre (bushels)	139.7	161.9	149.8	248.3
Cost per acre:			Average per acre	
Land rent	$ 29.39	$ 15.52	$ 11.07	$ 31.70
Seed	3.70	4.41	3.51	7.36
Fertilizer	97.37	82.17	80.42	101.81
Spray and dust	39.18	43.55	32.12	54.07
Cultural labor	87.97	102.06	78.03	113.91
Machine hire	2/ 5.28	27.93	2/ 20.30	2/ 14.62
Gas, oil and grease	13.46	19.59	15.22	37.13
Repair and maintenance	21.40	31.83	17.45	50.14
Depreciation	18.42	16.47	12.04	42.80
Licenses and insurance	7.40	4.55	4.24	16.13
Interest on production capital (6% - 5 mos.)	3.30	9.72	7.34	16.73
Interest on capital invested (other than land)	5.53	4.84	3.61	12.78
Miscellaneous expense	7.95	17.06	10.12	22.40
Total growing cost	$ 364.35	$ 379.71	$ 315.57	$ 720.48
Harvesting and marketing costs:				
Picking labor	$ 72.88	$ 73.06	$ 84.00	$ 111.53
Grading and packing labor	80.64	94.86	82.72	141.75
Containers	66.31	76.48	67.21	110.92
Hauling	12.87	28.58	21.71	24.14
Selling	24.13	22.37	28.00	32.27
Total harvesting and marketing	$ 256.83	$ 295.35	$ 283.64	$ 420.61
Total crop cost	$ 621.18	$ 674.36	$ 600.21	$ 1121.09
Crop sales	$ 558.21	$ 876.02	$ 564.90	$ 1741.56
Net return	$ -62.97	$ 201.66	$ -35.31	$ 620.47

1/ Staked crop.

2/ Reported by 15, 10 and 13 growers averaging $6.88, $22.00 and $15.57 per acre, respectively.

[illegible] COSTS PER ACRE IN SELECTED AREAS IN FLORIDA, SEASON 1956-57

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown.)

Item	Marion-Sumter 1/	Sumter	Vauchula	East Coast 2/
Number of growers	11	7	10	6
Number of acres	245.0	15.0	152.5	190.0
Average acres per grower	22.3	2.1	15.2	31.7
Average yield per acre (bushels)	287.6	170.3	165.1	222.1
Growing costs:		Average per acre		
Land rent	$ 8.65	$ 22.86	$ 13.75	$ 22.50
Seed	4.90	6.19	8.36	8.99
Fertilizer	71.72	55.09	74.07	140.15
Spray and dust	42.79	32.21	43.60	84.98
Cultural labor	54.04	41.93	86.74	341.21
Machine hire	24.36		3/ 9.14	3/ 27.31
Gas, oil and grease	13.90	15.17	16.31	54.52
Repair and maintenance	10.67	13.06	13.98	48.46
Depreciation	16.81	20.53	19.63	41.02
Licenses and insurance	4.59	5.43	3.67	15.65
Interest on production capital (6% - 5 mos.)	6.03	4.95	6.98	20.13
Interest on capital invested (other than land)	5.04	6.16	5.89	12.31
Miscellaneous expense	5.46	5.98	9.43	63.32
Total growing cost	$ 268.96	$ 229.56	$ 311.55	$ 878.55
Harvesting and marketing costs:				
Picking labor	$ 122.04	$ 120.06	$ 89.03	$ 166.95
Grading and packing labor	153.70			152.54
Containers	106.41			211.24
Hauling	24.40	15.04	14.24	53.97
Selling	35.47	10.53	8.14	140.26
Total harvesting and marketing	$ 442.02	$ 145.63	$ 111.41	$ 724.96
Total crop cost	$ 710.98	$ 375.19	$ 422.96	$ 1603.51
Crop sales	$ 1186.93	$ 586.52	$ 393.48	$ 1637.88
Net return	$ 475.95	$ 211.33	$ -29.48	$ 34.37

1/ Irrigated crop.

2/ Vine-ripened crop.

3/ Reported by 8 and 4 growers averaging $11.42 and $40.96 per acre, respectively.

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J. E. OWENS
Truck Crops Statistician

J. C. T. [illegible], Jr.
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G. N. [illegible]
C. L. [illegible]

[illegible]
Agricultural Statistician

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[illegible] Agricultural Economics

TOMATOES: COSTS AND RETURNS PER ACRE AND PER UNIT IN SELECTED AREAS IN FLORIDA
5-SEASON AVERAGE 1952-53 to 1956-57

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown).

Item	Dade	Fort Pierce	Immokalee-Fort Myers	Wauchula
Number of growers	68	63	76	73
Number of acres	53,912.2	29,335.0	13,620.0	911.6
Average acres per grower	612.6	465.6	179.2	12.5
Average yield per acre (60 lb. crate)	170.0	151.0	146.6	174.5
Growing costs:		Average per acre		
Land rent	$ 34.63	$ 12.79	$ 10.15	$ 12.15
Seed	4.21	3.91	4.37	6.88
Fertilizer	96.94	79.63	82.32	79.06
Spray and dust	40.18	35.25	44.53	40.68
Cultural labor	108.82	105.66	69.39	75.48
Machine hire	5.15	27.50	16.79	12.42
Gas, oil and grease	13.98	22.96	15.43	16.92
Repair and maintenance	22.96	35.35	14.47	12.93
Depreciation	19.04	18.71	13.00	18.54
Licenses and insurance	7.12	6.66	3.51	3.95
Interest on production capital (6% - 5 mos.)	8.64	8.55	6.67	6.66
Interest on capital invested (other than land)	5.71	5.61	3.90	5.56
Miscellaneous expense	11.57	11.90	5.98	6.04
Total growing cost	$ 378.95	$ 374.68	$ 290.51	$ 297.27
Harvesting and marketing costs:				
Picking labor	$ 85.45	$ 79.66	$ 83.72	$ 103.98
Grading and packing labor	93.98	92.25	88.14	
Containers	68.49	71.37	66.67	
Hauling	12.25	25.24	19.78	18.14
Selling	25.25	22.02	24.38	9.08
Total harvesting and marketing	$ 285.42	$ 290.54	$ 282.69	$ 131.20
Total crop cost	$ 664.37	$ 665.22	$ 573.20	$ 428.47
Crop sales	$ 698.19	$ 657.55	$ 513.73	$ 458.86
Net return	$ 33.82	$ - 7.67	$ - 59.47	$ 30.39
		Average per crate		
Total growing cost	$ 2.23	$ 2.48	$ 1.98	$ 1.71
Harvesting and marketing costs:				
Picking labor	$ 0.50	$ 0.53	$ 0.57	$ 0.60
Grading and packing labor	.56	.61	.60	
Containers	.40	.47	.45	
Hauling	.07	.17	.14	.10
Selling	.15	.15	.17	.05
Total harvesting and marketing	$ 1.68	$ 1.93	$ 1.93	$ 0.75
Total crop cost	$ 3.91	$ 4.41	$ 3.91	$ 2.46
Crop sales	$ 4.11	$ 4.36	$ 3.50	$ 2.63
Net return	$ .20	$ - .05	$ - .41	$ .17

TOMATOES: COSTS AND RETURNS PER ACRE AND PER UNIT IN SELECTED AREAS IN FLORIDA
5-SEASON AVERAGE 1952-53 to 1956-57

(The figures shown below are compiled by the Florida Agricultural Experiment Stations. They are based on grower records and estimates and are averages of the samples shown.)

Item	Manatee-Ruskin (Staked)	East Coast (Vine-Ripe) a/	Sumter	Marion-Sumter a/
Number of growers	64	6	50	11
Number of acres	8,314.5	190.0	118.9	245.0
Average acres per grower	129.9	31.7	2.4	22.3
Average yield per acre (60 lb. crates)	225.1	196.2	153.0	236.4
Growing costs:		Average per acre		
Land rent	$ 31.84	$ 22.50	$ 23.90	$ 8.65
Seed	8.04	8.99	7.13	4.90
Fertilizer	94.79	140.15	64.21	71.78
Spray and dust	52.77	84.98	27.27	42.79
Cultural labor	266.79	341.21	36.96	54.04
Machine hire	12.81	27.31	2.64	24.36
Gas, oil and grease	29.64	54.52	15.43	13.90
Repair and maintenance	33.95	46.86	10.15	10.67
Depreciation	35.00	41.02	21.10	16.81
Licenses and insurance	11.41	15.65	6.05	4.59
Interest on production capital (6-5 mos.)	13.98	20.13	5.00	6.03
Interest on capital invested (other than land)	10.50	12.31	6.33	5.04
Miscellaneous expense	16.90	63.32	6.24	5.46
Total growing cost	$ 618.42	$ 873.55	$ 232.41	$ 268.95
Harvesting and marketing costs:				
Picking labor	$ 119.24	$ 166.95	$ 95.72	$ 122.04
Grading and packing labor	166.73	152.54		153.70
Containers	118.15	211.24		106.61
Hauling	24.15	53.97	16.55	24.40
Selling	37.76	140.26	10.21	35.47
Total harvesting and marketing	$ 466.03	$ 724.96	$ 122.48	$ 342.02
Total crop cost	$ 1084.45	$ 1603.51	$ 354.89	$ 710.98
Crop sales	$ 1055.92	$ 1637.88	$ 506.23	$ 1186.93
Net return	$ - 28.53	$ 34.37	$ 151.34	$ 475.95
		Average per crate		
Total growing cost	$ 2.75	$ 4.48	$ 1.52	$ 1.14
Harvesting and marketing costs:				
Picking labor	$ 0.53	$ 0.85	$ 0.62	$ 0.52
Grading and packing labor	.74	.78		.65
Containers	.52	1.08		.45
Hauling	.11	.27	.11	.10
Selling	.17	.71	.07	.15
Total harvesting and marketing	$ 2.07	$ 3.69	$ .80	$ 1.87
Total crop cost	$ 4.82	$ 8.17	$ 2.32	$ 3.01
Crop sales	$ 4.69	$ 8.35	$ 3.31	$ 5.02
Net return	$ - .13	$ .18	$ .99	$ 2.01

a/ Average 1956-57 season only.

FLORIDA VEGETABLE CROPS

ANNUAL STATISTICAL SUMMARY

1961

Volume XVII

ACREAGE, PRODUCTION AND VALUE
[illegible]

FLORIDA CROP REPORTING SERVICE
[illegible], FLORIDA

UNITED STATES
DEPARTMENT OF AGRICULTURE
[illegible]

UNIVERSITY OF FLORIDA
AGRICULTURAL EXPERIMENT STATIONS
[illegible]

TOMATOES
COSTS AND RETURNS IN SELECTED AREAS IN FLORIDA
SEASON 1960-61

Item	Dade	Fort Pierce	Immokalee-Lee
Number of growers	9	16	7
Number of acres	3,858	5,380	1,342
Average acres per grower	429	336	192
Average yield per acre (60 lb.)	268	182	218
Growing costs:		Average per acre	
Land rent	$ 36.41	$ 9.96	$ 12.12
Seed	5.31	5.47	4.85
Fertilizer	130.10	100.48	85.78
Spray and dust	74.46	63.26	57.29
Cultural labor	119.10	130.31	92.53
Machine hire	8.47 a/	43.14	32.55
Gas, oil and grease	17.49	29.57	23.37
Repair and maintenance	36.20	42.49	24.15
Depreciation	17.57	19.85	16.68
Licenses and insurance	14.18	4.88	4.66
Interest on production capital, (6% - 5 mos.)	11.26	11.02	8.82
Interest on capital invested (other than land)	1.76	1.99	1.67
Miscellaneous expense	8.81	11.17	15.69
Total growing cost	$ 481.12	$ 473.59	$ 380.16
Harvesting and marketing costs:			
Picking labor	$ 147.57	$ 119.39	$ 152.89
Grading and packing labor	152.18	101.59	146.97
Containers	132.08	94.82	127.91
Hauling	24.69	31.35	30.64
Selling	40.68	26.93	37.49
Total harvesting and marketing	$ 497.20	$ 374.08	$ 495.90
Total crop cost	$ 978.32	$ 847.67	$ 876.06
Crop sales	$1006.12	$ 885.90	$ 966.72
Net return	$ 27.80	$ 38.23	$ 90.66
	Average per 60 lb. unit		
Production cost	$ 1.795	$ 2.602	$ 1.744
Harvesting and marketing costs:			
Picking	$ 0.550	$ 0.656	$ 0.701
Packing	.568	.558	.674
Containers	.493	.521	.587
Hauling	.092	.172	.141
Selling	.152	.148	.172
Total harvesting and marketing	$ 1.855	$ 2.055	$ 2.275
Total crop cost	$ 3.650	$ 4.657	$ 4.019
Crop sales (F.O.B.)	$ 3.754	$ 4.867	$ 4.434
Net return	$ 0.104	$ 0.210	$ 0.415

a/ Reported by 7 growers averaging $10.90 per acre.

Source: Grower records and estimates.

TOMATOES (STAKED)
COSTS AND RETURNS IN SELECTED AREAS IN FLORIDA
SEASON 1960-61

	Manatee-Ruskin	Pompano b/
Number of growers	10	6
Number of acres	1,556	738
Average acres per grower	156	123
Average yield per acre (60 lb.)	326	406
(8 lb.)		3,045
Growing costs:	**Average per acre**	
Land rent	$ 39.04	$ 59.41
Seed	8.05	7.70
Fertilizer	114.62	267.25
Spray and dust	75.22	154.63
Cultural labor	212.45	754.72
Machine hire	3.30 a/	36.23
Gas, oil and grease	31.80	42.91
Repair and maintenance	32.53	61.58
Depreciation	32.32	57.98
Licenses and insurance	20.32	54.26
Interest on production capital, (6% - 5 mos.)	14.08	38.55
Interest on capital invested (other than land)	3.23	5.80
Miscellaneous expense	25.70	103.15
Total growing cost	$ 612.66	$1644.17
Harvesting and marketing costs:		
Picking labor	$ 163.37	$ 436.57
Grading and packing labor	227.14	485.87
Containers	160.05	421.52
Hauling	33.48	57.59
Selling	59.33	129.74
Total harvesting and marketing	$ 643.37	$1531.29
Total crop cost	$1256.03	$3175.46
Crop sales	$1347.14	$2968.70
Net return	$ 91.11	$-206.76
	Average per 60 lb. unit	
Production cost	$ 1.879	$ 4.050
Harvesting and marketing costs:		
Picking	0.501	1.075
Packing	.697	1.197
Containers	.491	1.038
Hauling	.103	.142
Selling	.182	.319
Total harvesting and marketing	$ 1.974	$ 3.771
Total crop cost	$ 3.853	$ 7.821
Crop sales (F.O.B.)	$ 4.132	$ 7.312
Net return	$ 0.279	$ -0.509

a/ Reported by 6 growers averaging $5.51 per acre.
b/ Vine-ripened.

Source: Grower records and estimates.

February, 1962 Agricultural Economics Mimeo Report 62-9

COSTS AND RETURNS
from
VEGETABLE CROPS IN FLORIDA

SEASON 1960-1961

by

Donald L. Brooke

Associate Agricultural Economist

DEPARTMENT OF AGRICULTURAL ECONOMICS
FLORIDA AGRICULTURAL EXPERIMENT STATIONS
Gainesville, Florida

Tomatoes
Per Acre Costs and Returns in Selected Areas in Florida
Season 1960-61

Item	Dade	Ft. Pierce	Immokalee-Lee
Number of growers	9	16	7
Number of acres	3,858	5,380	1,342
Average acres per grower	429	336	192
Average yield per acre (60 lb.)	268	182	218
Growing costs:		**Average per acre**	
Land rent	$ 36.41	$ 9.96	$ 12.12
Seed	5.31	5.47	4.85
Fertilizer	130.10	100.48	85.78
Spray and dust	74.46	63.26	57.29
Cultural labor	119.10	130.31	92.53
Machine hire	8.47 [a]	43.14	32.55
Gas, oil and grease	17.49	29.57	23.37
Repair and maintenance	36.20	42.49	24.15
Depreciation	17.57	19.85	16.68
Licenses and insurance	14.16	4.88	4.66
Interest on production capital, (6% - 5 mos.)	11.26	11.02	8.82
Interest on capital invested (other than land)	1.76	1.99	1.67
Miscellaneous expense	8.81	11.17	15.69
Total growing cost	$ 481.12	$473.59	$380.16
Harvesting and marketing costs:			
Picking labor	$ 147.57	$119.39	$152.89
Grading and packing labor	152.18	101.59	146.97
Containers	132.08	94.82	127.91
Hauling	24.69	31.35	30.64
Selling	40.68	26.93	37.49
Total harvesting and marketing	$ 497.20	$374.08	$495.90
Total crop cost	$ 978.32	$847.67	$876.06
Crop sales	$1006.12	$885.90	$966.72
Net return	$ 27.80	$ 38.23	$ 90.66

[a] Reported by 7 growers averaging $10.90 per acre.

Source: Grower records and estimates.

Tomatoes (Staked)
Per Acre Costs and Returns in Selected Areas in Florida
Season 1960-61

Item	Manatee-Ruskin	Pompano [b]
Number of growers	10	6
Number of acres	1,556	738
Average acres per grower	156	123
Average yield per acre (60 lb.)	326	406
(8 lb.)		3,045
Growing costs:	**Average per acre**	
Land rent	$ 39.04	$ 59.41
Seed	8.05	7.70
Fertilizer	114.62	267.25
Spray and dust	75.22	154.63
Cultural labor	212.45	754.72
Machine hire	3.30 [a]	36.23
Gas, oil and grease	31.80	42.91
Repair and maintenance	32.53	61.58
Depreciation	32.32	57.98
Licenses and insurance	20.32	54.26
Interest on production capital, (6% - 5 mos.)	14.08	38.55
Interest on capital invested (other than land)	3.23	5.80
Miscellaneous expense	25.70	103.15
Total growing cost	$ 612.66	$1644.17
Harvesting and marketing costs:		
Picking labor	$ 163.37	$ 436.57
Grading and packing labor	227.14	485.87
Containers	160.05	421.52
Hauling	33.48	57.59
Selling	59.33	129.74
Total harvesting and marketing	$ 643.37	$1531.29
Total crop cost	$1256.03	$3175.46
Crop sales	$1347.14	$2968.70
Net return	$ 91.11	$-206.76

[a] Reported by 6 growers averaging $5.51 per acre.
[b] Vine-ripened.
Source: Grower records and estimates.

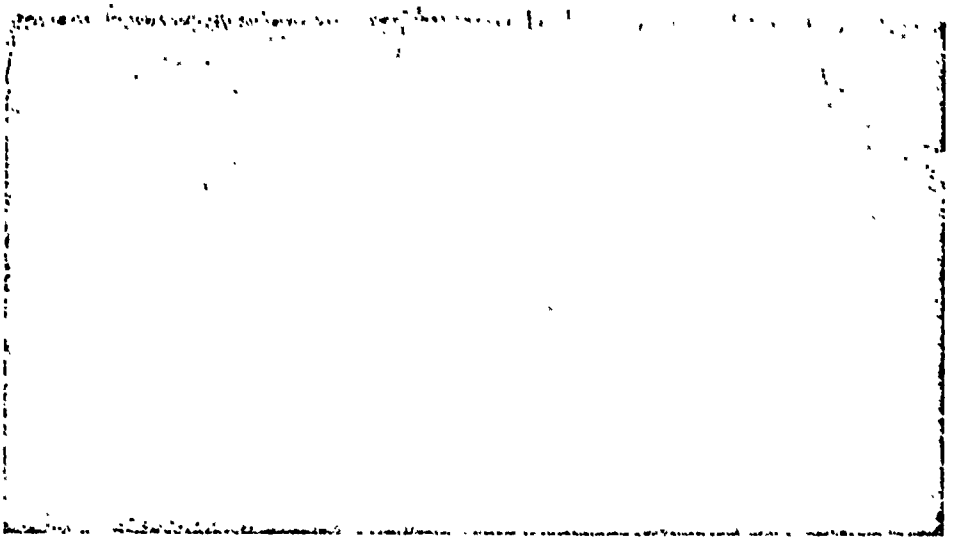
March, 1963 Agricultural Economics Mimeo Report 63-8

COSTS AND RETURNS

from

VEGETABLE CROPS IN FLORIDA

Season 1961-62



by

Donald L. Brooke

Associate Agricultural Economist

DEPARTMENT OF AGRICULTURAL ECONOMICS
FLORIDA AGRICULTURAL EXPERIMENT STATIONS
Gainesville, Florida

Tomatoes
Per Acre Costs and Returns in Selected Areas in Florida
Season 1961-62

Item	Dade	Ft. Pierce	Immokalee-Lee
Number of growers	13	22	16
Number of acres	4,696	5,260	2,980
Average acres per grower	361	239	186
Average yield per acre (60 lb.)	235	201	194
Growing costs:		Average per acre	
Land rent	$ 42.70	$ 12.32	$ 15.10
Seed	7.57	4.02	5.46
Fertilizer	119.90	99.24	95.71
Spray and dust	81.14	64.47	50.14
Cultural labor	94.55	138.60	106.81
Machine hire	5.72[a/]	51.73	37.19
Gas, oil and grease	20.06	26.34	25.91
Repair and maintenance	27.99	34.26	28.63
Depreciation	28.27	25.30	28.71
Licenses and insurance	13.76	7.47	6.75
Interest on production capital, (6% - 5 mos.)	10.89	11.26	9.80
Interest on capital invested (other than land)	2.83	2.51	2.87
Miscellaneous expense	22.05	11.14	20.27
Total growing cost	$ 477.43	$489.24	$433.35
Harvesting and marketing costs:			
Picking labor	$ 128.18	$122.38	$141.10
Grading and packing labor	129.41	131.92	129.02
Containers	110.79	103.67	96.73
Hauling	29.72	39.26	42.59
Selling	40.28	37.68	42.04
Total harvesting and marketing	$ 438.38	$434.91	$451.48
Total crop cost	$ 915.81	$924.15	$884.83
Crop sales	$1039.63	$950.65	$927.05
Net return	$ 123.82	$ 26.50	$ 42.22

a/ Reported by 9 growers averaging $0.27 per acre.

Source: Grower records and estimates.

Tomatoes (Staked)
Per Acre Costs and Returns in Selected Areas in Florida
Season 1961-62

Item	Manatee-Ruskin	Pompano[a]
Number of growers	10	7
Number of acres	1,625	707
Average acres per grower	162	101
Average yield per acre (60 lb.)	229	669
(8 lb.)		5,014
Growing costs:	Average per acre	
Land rent	$ 47.03	$ 56.35
Seed	8.75	7.68
Fertilizer	108.17	327.62
Spray and dust	80.60	180.56
Cultural labor	194.07	686.22
Machine hire	3.36[b]	31.07[b]
Gas, oil and grease	33.23	39.35
Repair and maintenance	36.83	52.29
Depreciation	26.76	56.06
Licenses and insurance	18.19	30.13
Interest on production capital, (6% - 5 mos.)	13.39	37.38
Interest on capital invested (other than land)	2.68	5.60
Miscellaneous expense	25.47	83.68
Total growing cost	$ 599.03	$1593.99
Harvesting and marketing costs:		
Picking labor	$ 141.31	$ 701.00
Grading and packing labor	167.47	977.14
Containers	120.26	633.37
Hauling	31.64	106.34
Selling	48.48	197.45
Total harvesting and marketing	$ 509.16	$2615.30
Total crop cost	$1108.19	$4209.29
Crop sales	$1345.97	$4948.94
Net return	$ 237.78	$ 739.65

[a] Vine-ripened.

[b] Reported by 7 and 5 growers averaging $4.79 and $43.49 per acre, respectively.

Source: Grower records and estimates.

April, 1964 Agricultural Economics Mimeo Report EC 64-11

COSTS AND RETURNS
from
VEGETABLE CROPS IN FLORIDA

SEASON 1962-1963

by

Donald L. Brooke

Agricultural Economist

DEPARTMENT OF AGRICULTURAL ECONOMICS
FLORIDA AGRICULTURAL EXPERIMENT STATIONS
Gainesville, Florida

Tomatoes
Costs and Returns in Selected Areas in Florida
Season 1962-63

Item	Dade		Ft. Pierce	
Number of growers	15		16	
Number of acres	8,322		4,050	
Average acres per grower	555		253	
Average yield per acre (60 lb.)	198		201	
Growing costs:	Average per Acre	Unit	Average per Acre	Unit
Land rent	$ 43.43		$ 14.32	
Seed	6.71		5.41	
Fertilizer	120.77		95.76	
Spray and dust	68.84		63.46	
Cultural labor	79.20		134.91	
Machine hire	4.61[a/]		52.45	
Gas, oil and grease	19.68		25.79	
Repair and maintenance	31.47		37.60	
Depreciation	21.92		27.21	
Licenses and insurance	15.35		10.79	
Interest on production capital, (6% - 5 mos.)	10.27		11.73	
Interest on capital invested (other than land)	2.19		2.72	
Miscellaneous expense	20.80		28.78	
Total growing cost	$445.24	$ 2.249	$510.93	$2.542
Harvesting and marketing costs:				
Picking labor	$130.08	$ 0.657	$132.29	$0.658
Grading and packing labor	116.49	.588	132.82	.660
Containers	92.20	.466	109.27	.544
Hauling	25.06	.126	44.40	.221
Selling	28.52	.144	33.96	.169
Total harvesting and marketing	$392.35	$ 1.981	$452.74	$2.252
Total crop cost	$837.59	$ 4.230	$963.67	$4.794
Crop sales	$808.05	$ 4.081	$922.29	$4.588
Net return	$-29.54	$-0.149	$-41.38	$-0.206

a/ Reported by 8 growers averaging $8.65 per acre.

Source: Grower records and estimates.

Tomatoes--Concluded
Costs and Returns in Selected Areas in Florida
Season 1962-63

Item	Immokalee-Lee	
Number of growers	13	
Number of acres	2,182	
Average acres per grower	168	
Average yield per acre	164	
Growing costs:	Average per Acre	Unit
Land rent	$ 10.85	
Seed	6.87	
Fertilizer	97.36	
Spray and dust	55.33	
Cultural labor	90.72	
Machine hire	30.77	
Gas, oil and grease	26.42	
Repair and maintenance	23.35	
Depreciation	23.98	
Licenses and insurance	5.07	
Interest on production capital, (6% - 5 mos.)	9.40	
Interest on capital invested (other than land)	2.40	
Miscellaneous expense	29.30	
Total growing cost	$411.82	$ 2.511
Harvesting and marketing costs:		
Picking labor	$120.13	$ 0.732
Grading and packing labor	107.69	.657
Containers	91.35	.557
Hauling	39.33	.240
Selling	30.76	.188
Total harvesting and marketing	$389.26	$ 2.374
Total crop cost	$801.08	$ 4.885
Crop sales	$767.96	$ 4.683
Net return	$-33.12	$-0.202

Source: Grower records and estimates.

Tomatoes (Staked)
Costs and Returns in Selected Areas in Florida
Season 1962-63

Item	Manatee-Ruskin		Pompano[a]	
Number of growers	10		13	
Number of acres	1,743		1,324	
Average acres per grower	174		132	
Average yield per acre (60 lb.)	334		567	
(8 lb.)			4,254	
Growing costs:	Acre	Average per Unit	Acre	Unit
Land rent	$ 38.78		$ 54.96	
Seed	9.99		13.13	
Fertilizer	112.30		333.06	
Spray and dust	70.52		231.98	
Cultural labor	224.57		765.85	
Machine hire	13.08[b]		57.93	
Gas, oil and grease	28.46		40.64	
Repair and maintenance	31.36		65.32	
Depreciation	27.45		47.96	
Licenses and insurance	15.71		19.69	
Interest on production capital, (6% - 5 mos.)	14.43		43.77	
Interest on capital invested (other than land)	2.75		4.80	
Miscellaneous expense	32.34		168.42	
Total growing cost	$ 621.74	$1.861	$1847.51	$3.258
Harvesting and marketing costs:				
Picking labor	$ 200.08	$0.599	$ 498.88	$0.880
Grading and packing labor	279.51	.837	742.55	1.310
Containers	172.93	.518	534.05	.942
Hauling	45.92	.138	87.87	.155
Selling	54.58	.163	175.93	.310
Total harvesting and marketing	$ 753.02	$2.255	$2039.28	$3.597
Total crop cost	$1374.76	$4.116	$3886.79	$6.855
Crop sales	$1483.26	$4.441	$4431.91	$7.816
Net return	$ 108.50	$0.325	$ 545.12	$0.961

[a] Vine-ripened.

[b] Reported by 8 growers averaging $16.35 per acre.

Source: Grower records and estimates.

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COSTS AND RETURNS

from

VEGETABLE CROPS IN FLORIDA

SEASON 1963-1964
With Comparisons

by

Donald L. Brooke

Agricultural Economist

DEPARTMENT OF AGRICULTURAL ECONOMICS
FLORIDA AGRICULTURAL EXPERIMENT STATIONS
Gainesville, Florida

Tomatoes
Costs and Returns in the Dade County Area,
3-Season Average 1960-61 to 1962-63 and 1963-64

Item	3-Season Average	1963-64	
Number of growers	37	13	
Number of acres	16,876	8,704	
Average acres per grower	456	670	
Average yield per acre (60 lb.)	234	167	
	Average per Acre	Average per Acre	Unit
Growing costs:			
Land rent	$ 40.84	$ 41.70	
Seed	6.53	6.79	
Fertilizer	123.59	127.57	
Spray and dust	74.81	66.91	
Cultural labor	97.61	98.84	
Machine hire	6.27	19.31[a/]	
Gas, oil and grease	19.08	20.32	
Repair and maintenance	31.89	32.23	
Depreciation	22.59	21.73	
Licenses and insurance	14.43	16.30	
Interest on production capital,(6% - 5 mos.)	10.81	11.21	
Interest on capital invested(other than land)	2.26	2.18	
Miscellaneous expense	17.22	18.36	
Total growing cost	$ 467.93	$ 483.45	$ 2.895
Harvesting and marketing costs:			
Picking labor	$ 135.28	$ 107.00	$ 0.641
Grading and packing labor	132.69	106.03	.635
Containers	111.69	82.16	.492
Hauling	26.49	21.22	.127
Selling	36.49	30.57	.183
Total harvesting and marketing	$ 442.64	$ 346.98	$ 2.078
Total crop cost	$ 910.57	$ 830.43	$ 4.973
Crop sales	$ 951.27	$ 863.62	$ 5.171
Net return	$ 40.70	$ 33.19	$ 0.198

a/ Reported by 10 growers averaging $25.11 per acre.

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Ft. Pierce Area,
3-Season Average 1960-61 to 1962-63 and 1963-64

Item	3-Season Average	1963-64	
Number of growers	54	8	
Number of acres	14,690	2825	
Average acres per grower	272	353	
Average yield per acre (60 lb.)	195	198	
Growing costs:	Average per Acre	Average per Acre	Unit
Land rent	$ 12.20	$ 11.10	
Seed	5.23	6.85	
Fertilizer	98.49	77.17	
Spray and dust	63.73	52.48	
Cultural labor	134.60	117.84	
Machine hire	49.11	40.40	
Gas, oil and grease	27.23	22.02	
Repair and maintenance	38.12	34.41	
Depreciation	24.05	18.39	
Licenses and insurance	7.71	9.46	
Interest on production capital,(6% - 5 mos.)	11.34	9.60	
Interest on capital invested (other than land)	2.41	1.84	
Miscellaneous expense	17.03	12.23	
Total growing cost	$ 491.25	$ 413.79	$ 2.090
Harvesting and marketing costs:			
Picking labor	$ 124.68	$ 119.59	$ 0.604
Grading and packing labor	122.11	132.35	.669
Containers	102.59	102.01	.515
Hauling	38.34	45.80	.231
Selling	32.86	40.36	.204
Total harvesting and marketing	$ 420.58	$ 440.11	$ 2.223
Total crop cost	$ 911.83	$ 853.90	$ 4.313
Crop sales	$ 919.61	$1043.09	$ 5.268
Net return	$ 7.78	$ 189.19	$ 0.955

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Immokalee-Lee Area,
3-Season Average 1960-61 to 1962-63 and 1963-64

Item	3-Season Average	1963-64	
Number of growers	36	9	
Number of acres	6,504	2,362	
Average acres per grower	181	262	
Average yield per acre (60 lb.)	192	226	
	Average per Acre	Acre	Unit
Growing costs:			
Land rent	$ 12.69	$ 11.08	
Seed	5.73	6.67	
Fertilizer	92.95	87.70	
Spray and dust	54.26	58.85	
Cultural labor	96.69	102.05	
Machine hire	33.50	47.86	
Gas, oil and grease	25.23	20.25	
Repair and maintenance	25.38	23.53	
Depreciation	23.12	31.21	
Licenses and insurance	5.49	8.09	
Interest on production capital,(6% - 5 mos.)	9.34	9.46	
Interest on capital invested(other than land)	2.31	3.12	
Miscellaneous expense	21.75	12.36	
Total growing cost	$ 408.44	$ 422.23	$ 1.868
Harvesting and marketing costs:			
Picking labor	$ 138.04	$ 141.63	$ 0.627
Grading and packing labor	127.90	153.44	.679
Containers	105.33	124.04	.549
Hauling	37.52	58.13	.257
Selling	36.76	46.41	.205
Total harvesting and marketing	$ 445.55	$ 523.65	$ 2.317
Total crop cost	$ 853.99	$ 945.88	$ 4.185
Crop sales	$ 887.24	$1236.16	$ 5.470
Net return	$ 33.25	$ 290.28	$ 1.285

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns in the Manatee-Ruskin
3-Season Average 1960-61 to 1962-63 and 1963-64

Item	3-Season Average	1963-64	
Number of growers	30	9	
Number of acres	4,924	1,310	
Average acres per grower	164	146	
Average yield per acre (60 lb.)	296	398	
	Average per Acre	Average per Acre	Unit
Growing costs:			
Land rent	$ 41.62	$ 40.33	
Seed	8.93	9.07	
Fertilizer	111.70	119.03	
Spray and dust	75.45	69.15	
Cultural labor	210.37	229.68	
Machine hire	6.58	6.92	
Gas, oil and grease	31.16	28.54	
Repair and maintenance	33.57	28.60	
Depreciation	28.84	37.48	
Licenses and insurance	18.07	20.84	
Interest on production capital,(6% - 5 mos.)	14.13	14.64	
Interest on capital invested(other than land)	2.89	3.75	
Miscellaneous expense	27.84	33.58	
Total growing cost	$ 611.15	$ 641.61	$ 1.612
Harvesting and marketing costs:			
Picking labor	$ 168.25	$ 216.30	$ 0.543
Grading and packing labor	224.71	282.38	.710
Containers	151.08	236.63	.595
Hauling	37.01	48.93	.123
Selling	54.13	84.80	.213
Total harvesting and marketing	$ 635.18	$ 869.04	$ 2.184
Total crop cost	$1246.33	$1510.65	$ 3.796
Crop sales	$1392.13	$2050.03	$ 5.151
Net return	$ 145.80	$ 539.38	$ 1.355

Source: Grower records and estimates.

Vine-Ripe Tomatoes
Costs and Returns in the Palm Beach-Broward Area, 3-Season Average 1960-61 to 1962-63 and 1963-64

Item	3-Season Average	1963-64	
Number of growers	26	11	
Number of acres	2,768	1,170	
Average acres per grower	106	106	
Average yield per acre (60 lb.)	547	526	
Growing costs:	**Average per Acre**	**Average per Acre**	**Unit**
Land rent	$ 56.91	$ 64.22	
Seed	9.50	11.91	
Fertilizer	309.31	306.42	
Spray and dust	189.06	160.72	
Cultural labor	735.60	997.63	
Machine hire	41.74	94.37	
Gas, oil and grease	40.97	46.36	
Repair and maintenance	59.73	60.76	
Depreciation	54.00	66.24	
Licenses and insurance	34.69	28.60	
Interest on production capital(6% - 5 mos.)	39.90	47.89	
Interest on capital invested(other than land)	5.40	6.62	
Miscellaneous expense	118.42	144.62	
Total growing cost	$1695.23	$2036.36	$ 3.871
Harvesting and marketing costs:			
Picking labor	$ 545.48	$ 431.47	$ 0.820
Grading and packing labor	735.19	674.89	1.283
Containers	529.65	528.32	1.005
Hauling	83.93	67.49	.128
Selling	167.71	192.00	.365
Total harvesting and marketing	$2061.96	$1894.17	$ 3.601
Total crop cost	$3757.19	$3930.53	$ 7.472
Crop sales	$4116.53	$4071.13	$ 7.740
Net return	$ 359.34	$ 140.60	$ 0.268

Source: Grower records and estimates.

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COSTS AND RETURNS

from

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SEASON 1964-1965
With Comparisons

by

Donald L. Brooke

Agricultural Economist

DEPARTMENT OF AGRICULTURAL ECONOMICS
FLORIDA AGRICULTURAL EXPERIMENT STATIONS
Gainesville, Florida

Tomatoes
Costs and Returns in the Dade County Area,
4-Season Average 1960-61 to 1963-64 and 1964-65

Item	4-Season Average	1964-65
Number of growers	50	13
Number of acres	25,580	11,008
Average acres per grower	512	847
Average yield per acre (60 lb.)	217	111
Growing costs:	Average per Acre	Average per Acre	Unit
Land rent	$ 41.06	$ 34.83	
Seed	6.60	7.61	
Fertilizer	124.58	130.03	
Spray and dust	72.84	76.09	
Cultural labor	97.92	91.83	
Machine hire	9.53	4.53[a/]	
Gas, oil and grease	19.39	17.03	
Repair and maintenance	31.97	26.48	
Depreciation	22.37	19.82	
Licenses and insurance	14.90	12.94	
Interest on production capital (6% - 5 mos.)	10.91	10.29	
Interest on capital invested (other than land)	2.24	1.98	
Miscellaneous expense	17.50	10.44	
Total growing cost	$471.81	$ 443.90	$ 3.999
Harvesting and marketing costs:			
Picking labor	$128.21	$ 70.87	$ 0.639
Grading and packing labor	126.03	72.02	.649
Containers	104.31	59.61	.537
Hauling	25.17	14.02	.126
Selling	35.01	21.31	.192
Total harvesting and marketing	$418.73	$ 237.83	$ 2.143
Total crop cost	$890.54	$ 681.73	$ 6.142
Crop sales	$929.36	$ 556.19	$ 5.011
Net return	$ 38.82	$-125.54	$-1.131

[a/] Reported by 8 growers averaging $7.37 per acre.

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Ft. Pierce Area,
4-Season Average 1960-61 to 1963-64 and 1964-65

Item	4-Season Average	1964-65
Number of growers	62	8
Number of acres	17,515	2,705
Average acres per grower	282	338
Average yield per acre (60 lb.)	196	218
Growing costs:	**Average per Acre**	**Average per Acre**	**Unit**
Land rent	$ 11.93	$ 11.01	
Seed	5.64	6.10	
Fertilizer	93.16	91.10	
Spray and dust	60.92	60.26	
Cultural labor	130.42	123.47	
Machine hire	46.93	58.71	
Gas, oil and grease	25.93	20.89	
Repair and maintenance	37.19	30.93	
Depreciation	22.63	24.26	
Licenses and insurance	8.15	10.93	
Interest on production capital (6% - 5 mos.)	10.90	10.82	
Interest on capital invested (other than land)	2.26	2.43	
Miscellaneous expense	15.83	19.42	
Total growing cost	$471.89	$ 470.33	$2.158
Harvesting and marketing costs:			
Picking labor	$123.41	$ 152.86	$0.701
Grading and packing labor	124.67	134.51	.617
Containers	102.45	116.28	.533
Hauling	40.20	52.79	.242
Selling	34.73	41.61	.191
Total harvesting and marketing	$425.46	$ 498.05	$2.284
Total crop cost	$897.35	$ 968.38	$4.442
Crop sales	$950.48	$1284.43	$5.892
Net return	$ 53.13	$ 316.05	$1.450

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Immokalee-Lee Area,
4-Season Average 1960-61 to 1963-64 and 1964-65

Item	4-Season Average	1964-65
Number of growers	45	8
Number of acres	8,866	2,190
Average acres per grower	197	274
Average yield per acre (60 lb.)	200	168
Growing costs:	Average per Acre	Average per Acre	Unit
Land rent	$ 12.29	$ 12.75	
Seed	5.96	9.83	
Fertilizer	91.64	113.44	
Spray and dust	55.40	78.66	
Cultural labor	98.03	133.93	
Machine hire	37.09	65.14	
Gas, oil and grease	23.99	19.51	
Repair and maintenance	24.92	28.03	
Depreciation	25.15	21.46	
Licenses and insurance	6.14	9.14	
Interest on production capital (6% - 5 mos.)	9.37	12.73	
Interest on capital invested (other than land)	2.51	2.15	
Miscellaneous expense	19.40	38.72	
Total growing cost	$411.89	$545.49	$3.247
Harvesting and marketing costs:			
Picking labor	$138.94	$115.81	$0.689
Grading and packing labor	134.28	107.45	.640
Containers	110.01	90.09	.536
Hauling	42.67	32.38	.193
Selling	39.17	31.62	.188
Total harvesting and marketing	$465.07	$377.35	$2.246
Total crop cost	$876.96	$922.84	$5.493
Crop sales	$974.47	$974.74	$5.802
Net return	$ 97.51	$ 51.90	$0.309

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns in the Manatee-Ruskin Area,
4-Season Average 1960-61 to 1963-64 and 1964-65

Item	4-Season Average	1964-65	
Number of growers	39	10	
Number of acres	6,234	1,670	
Average acres per grower	159	167	
Average yield per acre (60 lb.)	322	451	
Growing costs:	Average per Acre	Average per Acre	Unit
Land rent	$ 41.30	$ 45.51	
Seed	8.97	9.32	
Fertilizer	113.53	142.38	
Spray and dust	73.87	108.91	
Cultural labor	215.19	282.65	
Machine hire	6.66	19.82	
Gas, oil and grease	30.51	34.33	
Repair and maintenance	32.33	45.39	
Depreciation	31.00	55.83	
Licenses and insurance	18.77	26.57	
Interest on production capital (6% - 5 mos.)	14.26	19.14	
Interest on capital invested (other than land)	3.10	5.58	
Miscellaneous expense	29.27	50.60	
Total growing cost	$ 618.76	$ 846.03	$1.876
Harvesting and marketing costs:			
Picking labor	$ 180.27	$ 235.20	$0.521
Grading and packing labor	239.12	364.78	.809
Containers	172.47	271.16	.601
Hauling	39.99	49.97	.111
Selling	61.80	89.37	.198
Total harvesting and marketing	$ 693.65	$1010.48	$2.240
Total crop cost	$1312.41	$1856.51	$4.116
Crop sales	$1556.60	$2566.76	$5.691
Net return	$ 244.19	$ 710.25	$1.575

Source: Grower records and estimates.

Vine-Ripe Tomatoes
Costs and Returns in the Palm Beach - Broward Area,
4-Season Average 1960-61 to 1963-64 and 1964-65

Item	4-Season Average	1964-65	
Number of growers	37	19	
Number of acres	3,938	2,753	
Average acres per grower	106	145	
Average yield per acre (60 lb.)	542	542	
Growing costs:	Average per Acre	Average per Acre	Unit
Land rent	$ 58.74	$ 69.57	
Seed	10.10	14.97	
Fertilizer	308.59	330.76	
Spray and dust	181.97	183.71	
Cultural labor	801.10	1019.15	
Machine hire	54.90	76.56[a]	
Gas, oil and grease	42.32	45.93	
Repair and maintenance	59.99	74.20	
Depreciation	57.06	54.21	
Licenses and insurance	33.17	46.97	
Interest on production capital (6% - 5 mos.)	41.90	49.74	
Interest on capital invested (other than land)	5.70	5.42	
Miscellaneous expense	124.97	127.94	
Total growing cost	$1780.51	$2099.13	$3.873
Harvesting and marketing costs:			
Picking labor	$ 516.98	$ 491.39	$0.907
Grading and packing labor	720.12	656.10	1.210
Containers	529.32	472.54	.872
Hauling	79.82	78.39	.145
Selling	173.78	176.48	.325
Total harvesting and marketing	$2020.02	$1874.90	$3.459
Total crop cost	$3800.53	$3974.03	$7.332
Crop sales	$4105.18	$4254.52	$7.850
Net return	$ 304.65	$ 280.49	$0.518

[a] Reported by 17 growers averaging $85.57 per acre.

Source: Grower records and estimates.

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COSTS AND RETURNS

from

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SEASON 1965-1966
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by

Donald L. Brooke

Agricultural Economist

DEPARTMENT OF AGRICULTURAL ECONOMICS
FLORIDA AGRICULTURAL EXPERIMENT STATIONS
INSTITUTE OF FOOD AND AGRICULTURAL SCIENCES
Gainesville, Florida

Tomatoes
Costs and returns in the Dade County Area
5-Season Average 1960-61 to 1964-65 and 1965-66

Item	5-Season Average	1965-66
Number of growers	63	11
Number of acres	36,588	9,037
Average acres per grower	581	822
Average yield per acre (60 lb.)	196	139
Growing Costs:	Average per Acre	Average per Acre	60 lb.
Land rent	$ 39.81	$ 39.02	
Seed	6.80	6.20	
Fertilizer	125.68	118.52	
Spray and dust	73.49	77.52	
Cultural labor	96.70	86.69	
Machine hire	8.53	9.68	
Gas, oil and grease	18.92	18.67	
Repair and maintenance	30.87	31.70	
Depreciation	21.86	20.37	
Licenses and insurance	14.51	13.61	
Interest on production capital (6%-5 mos.)	10.78	10.28	
Interest on capital invested(other than land)	2.19	2.04	
Miscellaneous expense	16.09	9.59	
Total growing cost	$ 466.23	$443.90	$ 3.194
Harvesting and marketing costs:			
Picking labor	$ 116.74	$102.47	$ 0.737
Grading and packing labor	115.23	84.87	.611
Containers	95.37	73.82	.531
Hauling	22.94	16.05	.115
Selling	32.27	24.43	.176
Total harvesting and marketing cost	$ 382.55	$301.64	$ 2.170
Total Crop cost	$ 848.78	$745.54	$ 5.364
Crop sales	$ 854.73	$632.33	$ 4.549
Net return	$ 5.95	$-113.21	$-0.815

Source: Grover records and estimates.

Tomatoes
Costs and Returns in the Ft. Pierce Area
5-Season Average 1960-61 to 1964-65 and 1965-66

Item	5-Season Average	1965-66	
Number of growers	70	9	
Number of acres	20,220	3,720	
Average acres per grower	289	413	
Average yield per acre (60 lb.)	200	190	
Growing costs:	Average per Acre	Average per Acre	60 lb.
Land rent	$ 11.74	$ 9.60	$
Seed	5.73	8.61	
Fertilizer	92.75	96 95	
Spray and dust	60.78	84.67	
Cultural labor	129.03	147.13	
Machine hire	49.28	49.54	
Gas, oil and grease	24.92	23.30	
Repair and maintenance	35.94	37.36	
Depreciation	22.96	27.86	
Licenses and insurance	8.71	11.05	
Interest on production capital(6%-5mos.)	10.89	11.87	
Interest on capital invested(other than land)	2.30	2.79	
Miscellaneous expense	16.55	6.71	
Total growing cost	$471.58	$517.44	$ 2.723
Harvesting and marketing costs:			
Picking labor	$129.30	$163.16	$ 0.859
Grading and packing labor	126.64	119.79	.631
Containers	105.21	100.93	.531
Hauling	42.72	47.35	.249
Selling	36.11	34.86	.184
Total harvesting and marketing	$439.98	$466.09	$ 2.454
Total crop cost	$911.56	$983.53	$ 5.177
Crop sales	1017.28	1055.22	$ 5.554
Net return	$105.72	$ 71.69	$ 0.377

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Immokalee-Lee Area
5-Season Average 1960-61 to 1964-65 and 1965-66

Item	5-Season Average	1965-66
Number of growers	53	14
Number of acres	11,056	3,346
Average acres per grower	209	239
Average yield per acre (60 lb.)	194	184
Growing costs:	Average per Acre	Acre	60 lb.
Land rent	$ 12.38	$ 13.42	
Seed	6.74	8.22	
Fertilizer	96.00	88.55	
Spray & dust	60.05	66.14	
Cultural labor	105.21	108.29	
Machine hire	42.70	49.71[a/]	
Gas, oil and grease	23.09	20.05	
Repair and maintenance	25.54	29.20	
Depreciation	24.41	28.12	
Licenses and insurance	6.74	10.24	
Interest on production capital (6%-5mos.)	10.04	10.06	
Interest on capital invested(other than land)	2.44	2.81	
Miscellaneous expense	23.27	8.52	
Total growing cost	$438.61	$443.33	$ 2.409
Harvesting and marketing costs:			
Picking labor	$134.31	$160.96	$ 0.891
Grading and packing labor	128.92	135.48	.736
Containers	106.03	102.23	.556
Hauling	40.61	34.18	.186
Selling	37.66	31.74	.172
Total harvesting and marketing cost	$447.53	$467.59	$ 2.541
Total crop cost	$886.14	$910.92	$ 4.950
Crop sales	$974.53	1011.00	$ 5.494
Net return	$ 88.39	$100.08	$ 0.544

a/ Reported by 13 growers averaging $53.54 per acre.

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns in the Manatee-Ruskin Area
5-Season Average 1960-61 to 1964-65 and 1965-66

Item	5-Season Average	1965-66	
Number of growers	49	12	
Number of acres	7,904	1,910	
Average acres per grower	161	159	
Average yield per acre (60 lb.)	348	457	
Growing costs:	Average per Acre	Average per Acre	60 lb.
Land rent	$ 42.14	$ 38.96	$
Seed	9.04	6.52	
Fertilizer	119.30	167.83	
Spray and dust	80.88	112.90	
Cultural labor	228.68	273.48	
Machine hire	9.30	22.68a/	
Gas, oil and grease	31.27	35.50	
Repair and maintenance	34.94	55.20	
Depreciation	35.97	55.46	
Licenses and insurance	20.32	33.96	
Interest on production capital (6%-5 mos.)	15.24	20.14	
Interest on capital invested(other than land)	3.60	5.55	
Miscellaneous expense	33.54	58.47	
Total growing cost	$664.22	$886.65	$ 1.940
Harvesting and marketing costs:			
Picking labor	$191.25	$255.07	$ 0.558
Grading and packing labor	264.26	462.45	1.012
Containers	192.21	221.60	.485
Hauling	41.99	58.59	.128
Selling	67.31	69.17	.152
Total harvesting and marketing cost	$757.02	$1066.88	$ 2.335
Total crop cost	$1421.24	$1953.53	$ 4.275
Crop sales	$1758.64	$2073.33	$ 4.537
Net return	$ 337.40	$ 119.80	$ 0.262

a/ Reported by 10 growers averaging $27.22 per acre.

Source: Grower records and estimates.

Revised 32

Vine-Ripe Tomatoes
Costs and Returns in the Palm Beach-Broward Area
5-Season Average 1960-61 to 1964-65, and 1965-66

Item	5-Season Average	1965-66	
Number of growers	56	17	
Number of acres	6,692	3,265	
Average acres per grower	119	192	
Average yield per acre (60 lb.)	542	513	
Growing Costs:	Average per Acre	Average per Acre	60 lb.
Land rent	$ 60.90	$ 48.78	
Seed	11.08	13.42	
Fertilizer	313.02	293.96	
Spray and dust	182.32	172.35	
Cultural labor	844.72	923.74	
Machine hire	59.23	44.40a/	
Gas, oil and grease	43.04	42.70	
Repair and maintenance	62.83	55.33	
Depreciation	56.49	45.81	
Licenses and insurance	35.93	57.92	
Interest on production capital (6%-5 mos.)	43.47	43.50	
Interest on capital invested(other than land)	5.65	4.58	
Miscellaneous expense	125.56	87.54	
Total growing cost	$1,844.24	$1,834.03	$ 3.575
Harvesting and marketing costs:			
Picking labor	$ 511.87	$ 487.35	$ 0.950
Grading and packing labor	707.31	572.00	1.115
Containers	517.96	457.93	.893
Hauling	79.54	68.84	.134
Selling	174.32	152.01	.296
Total harvesting and marketing cost	$1,991.00	$1,738.13	$ 3.388
Total crop cost	$3,835.24	$3,572.16	$ 6.963
Crop sales	$4,135.06	$3,319.01	$ 6.470
Net return	$ 299.82	$ -253.15	$-0.493

a/ Reported by 16 growers averaging $47.17 per acre.

Source: Grower records and estimates.
DLB/gh - Rev. 5/15/67 - 500

VEGETABLE CROPS IN FLORIDA

SEASON 1966-1967
With Comparisons

by

Donald L. Brooke

Agricultural Economist

Tomatoes
Costs and Returns in the Dade County Area
5-Season Average 1961-62 to 1965-66 and 1966-67

Item	5-Season Average	1966-67	
Total number of growers	65	7	
Total number of acres	41,767	8,218	
Average acres per grower	643	1,174	
Average yield per acre (60 lb.)	170	157	
Growing costs:		Average per acre	60 lb.
Land rent	$ 40.34	$ 42.16	
Seed	6.98	5.78	
Fertilizer	123.36	121.83	
Spray and dust	74.10	78.45	
Cultural labor	90.22	99.97	
Machine hire	8.77	21.43	
Gas, oil and grease	19.15	21.76	
Repair and maintenance	29.97	35.88	
Depreciation	22.42	17.95	
Licenses and insurance	14.39	18.95	
Interest on production capital (6% 5 mos)	10.59	11.38	
Interest on capital invested (other than land)	2.24	1.79	
Miscellaneous expense	16.25	8.95	
Total growing cost	$458.78	$486.28	$3.097
Harvesting and marketing costs:			
Picking expense	$107.72	$105.22	$0.670
Grading and packing expense	101.77	141.04	.899
Containers	83.72	85.92	.547
Hauling	21.21	17.63	.112
Selling	29.02	29.93	.191
Total harvesting and marketing cost	$343.44	$379.74	$2.419
Total crop cost	$802.22	$866.02	$5.516
Crop sales	$779.96	$825.97	$5.261
Net return	$-22.26	$-40.05	$-0.255

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Ft. Pierce Area
5-Season Average 1961-62 to 1965-66 and 1966-67

Item	5-Season Average	1966-67	
Total number of growers	63	6	
Total number of acres	18,560	2,226	
Average acres per grower	295	371	
Average yield per acre (60 lb)	202	222	
Growing costs:		Average per Acre	
	Acre	Acre	60 lb.
Land rent	$ 11.67	$ 11.13	
Seed	6.36	6.92	
Fertilizer	92.04	96.81	
Spray and dust	65.07	78.79	
Cultural labor	132.39	141.16	
Machine hire	50.56	45.22	
Gas, oil and grease	23.67	22.03	
Repair and maintenance	34.91	37.64	
Depreciation	24.56	23.72	
Licenses and insurance	9.94	13.47	
Interest on production capital (6% 5 mos)	11.06	11.74	
Interest on capital invested (other than land)	2.46	2.37	
Miscellaneous expense	15.66	16.30	
Total growing cost	$480.35	$507.30	$2.285
Harvesting and marketing costs:			
Picking expense	$138.06	$147.67	$0.665
Grading and packing expense	130.28	142.29	.641
Containers	106.43	93.31	.420
Hauling	45.92	43.86	.198
Selling	37.69	30.52	.138
Total harvesting and marketing cost	$458.38	$457.65	$2.062
Total crop cost	$938.73	$964.95	$4.347
Crop sales	$1051.14	$1194.50	$5.381
Net return	$ 112.41	$ 229.55	$1.034

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Immokalee-Lee Area
5-Season Average 1961-62 to 1965-66 and 1966-67

Item	5-Season Average	1966-67
Total number of growers	60	19
Total number of acres	13,060	3,510
Average acres per grower	218	185
Average yield per acre (60 lb)	187	209
Growing costs:	Acre	Average per Acre / 60 lb.
Land rent	$ 12.64	$ 14.06
Seed	7.41	8.69
Fertilizer	96.55	110.16
Spray and dust	61.82	86.13
Cultural labor	108.36	122.13
Machine hire	46.13	35.10a/
Gas, oil and grease	22.43	25.04
Repair and maintenance	26.55	35.61
Depreciation	26.70	30.37
Licenses and insurance	7.86	10.03
Interest on production capital (6% - 5 mos)	10.29	11.49
Interest on capital invested (other than land)	2.67	3.04
Miscellaneous expense	21.83	12.82
Total growing cost	$451.24	$504.67 / $2.415
Harvesting and marketing costs:		
Picking expense	$136.53	$147.41 / $0.705
Grading and packing expense	126.62	191.90 / .918
Containers	100.89	102.64 / .491
Hauling	41.32	39.12 / .187
Selling	36.51	29.80 / .143
Total harvesting and marketing cost	$441.87	$510.87 / $2.444
Total crop cost	$893.11	$1015.54 / $4.859
Crop sales	$983.38	$1147.37 / $5.490
Net return	$ 90.27	$ 131.83 / $0.631

a/ Reported by 18 growers averaging $37.05 per acre.

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns in the Manatee-Ruskin Area
5-Season Average 1961-62 to 1965-66 and 1966-67

Item	5-Season Average	1966-67	
Total number of growers	51	13	
Total number of acres	8,258	2,092	
Average acres per grower	162	161	
Average yield per acre (60 lb.)	374	391	
Growing costs:		Average per Acre	60 lb.
Land rent	$ 42.12	$ 41.12	
Seed	8.73	10.91	
Fertilizer	129.94	158.61	
Spray and dust	88.42	92.31	
Cultural labor	240.89	269.99	
Machine hire	13.17	16.82 a/	
Gas, oil and grease	32.01	35.31	
Repair and maintenance	39.48	49.39	
Depreciation	40.60	49.44	
Licenses and insurance	23.05	25.91	
Interest on production capital (6% 5 mos)	16.45	18.63	
Interest on capital invested (other than land)	4.06	4.94	
Miscellaneous expense	40.09	45.03	
Total growing cost	$719.01	$818.41	$2.093
Harvesting and marketing costs:			
Picking expense	$209.59	$219.31	$0.561
Grading and packing expense	311.32	399.46	1.022
Containers	204.52	215.82	.552
Hauling	47.01	47.08	.120
Selling	69.28	58.90	.151
Total harvesting and marketing cost	$841.72	$940.57	$2.406
Total crop cost	$1560.73	$1758.98	$4.499
Crop sales	$1903.87	$2010.04	$5.141
Net return	$ 343.14	$ 251.06	$0.642

a/ Reported by 10 growers averaging $21.86 per acre

Source: Grower records and estimates.

Vine Ripe Tomatoes
Costs and Returns in the Immokalee-Lee Area
Season 1966-67

Item	1966-67 Average	
Total number of growers	5	
Total number of acres	983	
Average acres per grower	197	
Average yield per acre (60 lb.)	609	
Growing costs:	Average per Acre	60 lb.
Land rent	$ 31.95	
Seed	9.03	
Fertilizer	218.82	
Spray and dust	180.25	
Cultural labor	557.43	
Machine hire	90.35	
Gas, oil and grease	67.18	
Repair and maintenance	122.21	
Depreciation	119.66	
Licenses and insurance	40.62	
Interest on production capital(6% 5 mos)	37.28	
Interest on capital invested (other than land)	11.97	
Miscellaneous expense	173.60	
Total growing cost	$1660.35	$2.726
Harvesting and marketing costs:		
Picking expense	$ 632.94	$1.039
Grading and packing expense	765.88	1.258
Containers	424.37	.697
Hauling	68.09	.112
Selling	148.83	.244
Total harvesting and marketing cost	$2040.11	$3.350
Total crop cost	$3700.46	$6.076
Crop sales	$4186.37	$6.874
Net return	$ 485.91	$0.798

Source: Grower records and estimates.

Vine Ripe Tomatoes

Costs and Returns in the Palm Beach-Broward Area
5-Season Average 1961-62 to 1965-66 and 1966-67

Item	5-Season Average	1966-67	
Total number of growers	67	14	
Total number of acres	9,219	2,452	
Average acres per grower	138	175	
Average yield per acre (60. lb)	563	602	
Growing costs:	Acre	Average per Acre	60. lb
Land rent	$ 58.78	$ 66.60	
Seed	12.22	12.24	
Fertilizer	318.36	298.24	
Spray and dust	185.86	197.96	
Cultural labor	878.52	864.78	
Machine hire	60.86	58.07 a/	
Gas, oil and grease	43.00	43.46	
Repair and maintenance	61.58	79.40	
Depreciation	54.06	50.10	
Licenses and insurance	36.66	61.73	
Interest on production capital, (6% 5 mos)	44.46	44.02	
Interest on capital invested (other than land)	5.40	5.01	
Miscellaneous expense	122.44	78.40	
Total growing cost	$1882.20	$1860.01	$3.090
Harvesting and marketing costs:			
Picking expense	$ 522.02	$ 646.34	$1.074
Grading and packing expense	724.54	674.53	1.120
Containers	525.24	505.04	.839
Hauling	81.79	107.00	.178
Selling	178.77	171.61	.285
Total harvesting and marketing cost	$2032.36	$2104.52	$3.496
Total crop cost	$3914.56	$3964.53	$6.585
Crop sales	$4205.10	$4380.19	$7.276
Net return	$ 290.54	$ 415.66	$0.690

a/ Reported by 13 growers averaging $62.54 per acre

Source: Grower records and estimates.

February, 1969 Economics Mimeo Report EC 69-4

COSTS AND RETURNS

from

VEGETABLE CROPS IN FLORIDA

SEASON 1967-1968
With Comparisons

by

Donald L. Brooke

Agricultural Economist

DEPARTMENT OF AGRICULTURAL ECONOMICS
FLORIDA AGRICULTURAL EXPERIMENT STATIONS
INSTITUTE OF FOOD AND AGRICULTURAL SCIENCES
Gainesville, Florida

Tomatoes
Costs and Returns in the Dade County Area
5-Season Average 1962-63 to 1966-67 and 1967-68

Item	5-Season Average	1967-68	
Total number of growers	59	10	
Total number of acres	45,289	10,424	
Average acres per grower	768	1,042	
Average yield per acre (40 lb.)	231	238	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 40.23	$ 45.52	
Seed	6.62	6.29	
Fertilizer	123.74	118.37	
Spray and dust	73.56	94.21	
Cultural labor	91.31	90.81	
Machine hire	11.91	17.25	
Gas, oil and grease	19.49	17.75	
Repair and maintenance	31.55	25.18	
Depreciation	20.36	18.75	
Licenses and insurance	15.43	11.30	
Interest on production capital (6% - 5 mos)	10.68	10.82	
Interest on capital invested(other than land)	2.04	1.88	
Miscellaneous expense	13.63	5.99	
Total growing cost	$ 460.55	$ 464.12	$ 1.950
Harvesting and marketing costs:			
Picking expense	$ 103.13	$ 125.68	$ 0.528
Grading and packing expense	104.09	131.35	.552
Containers	78.74	88.84	.373
Hauling	18.80	30.23	.127
Selling	26.95	31.23	.131
Total harvesting and marketing cost	$ 331.71	$ 407.33	$ 1.711
Total crop cost	$ 792.26	$ 871.45	$ 3.661
Crop sales	$ 737.23	$1062.99	$ 4.466
Net return	$ -55.03	$ 191.54	$ 0.805

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Ft. Pierce Area
5-Season Average 1962-63 to 1966-67 and 1967-68

Item	5-Season Average	1967-68	
Total number of growers	47	3	
Total number of acres	15,526	3,232	
Average acres per grower	330	1,077	
Average yield per acre (40 lb.)	309	214	
Growing costs:	Acre	Average per Acre	40 lb.
Land rent	$ 11.43	$ 9.44	
Seed	6.78	8.20	
Fertilizer	91.56	101.32	
Spray and dust	67.93	68.37	
Cultural labor	132.90	162.53	
Machine hire	49.26	56.56	
Gas, oil and grease	22.81	23.39	
Repair and maintenance	35.59	32.60	
Depreciation	24.29	14.26	
Licenses and insurance	11.14	11.07	
Interest on production capital (6% - 5 mos.)	11.15	11.91	
Interest on capital invested(other than land)	2.43	1.43	
Miscellaneous expense	16.69	3.09	
Total growing cost	$ 483.96	$ 504.17	$ 2.356
Harvesting and marketing costs:			
Picking expense	$ 143.12	$ 108.72	$ 0.508
Grading and packing expense	132.35	97.46	.455
Containers	104.36	64.56	.302
Hauling	46.84	25.25	.118
Selling	36.26	25.33	.118
Total harvesting and marketing cost	$ 462.93	$ 321.32	$ 1.501
Total crop cost	$ 946.89	$ 825.50	$ 3.857
Crop sales	$1099.91	$ 656.76	$ 3.069
Net return	$ 153.02	$-168.73	$-0.788

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Immokalee-Lee Area
5-Season Average 1962-63 to 1966-67 and 1967-68

Item	5-Season Average	1967-68		
Total number of growers	63	11		
Total number of acres	13,590	3,523		
Average acres per grower	216	320		
Average yield per acre (40 lb.)	285	237		
Growing costs:		Average per Acre		40 lb.
Land rent	$ 12.43	$ 14.53		
Seed	8.06	8.63		
Fertilizer	99.44	103.04		
Spray and dust	69.02	79.89		
Cultural labor	111.43	125.09		
Machine hire	45.72	29.33	a/	
Gas, oil and grease	22.25	25.09		
Repair and maintenance	27.95	39.15		
Depreciation	27.03	31.69		
Licenses and insurance	8.51	9.30		
Interest on production capital (6% - 5 mos.)	10.63	11.37		
Interest on capital invested(other than land)	2.70	3.17		
Miscellaneous expense	20.34	20.98		
Total growing cost	$ 465.51	$501.26		$ 2.115
Harvesting and marketing costs:				
Picking expense	$ 137.79	$136.98		$ 0.578
Grading and packing expense	139.19	153.61		.648
Containers	102.07	89.33		.377
Hauling	40.63	33.28		.140
Selling	34.06	34.33		.145
Total harvesting and marketing cost	$ 453.74	$447.53		$ 1.888
Total crop cost	$ 919.25	$948.79		$ 4.003
Crop sales	$1027.44	$942.21		$ 3.975
Net return	$ 108.19	$ -6.58		$-0.028

a/ Reported by 9 growers averaging $35.85 per acre.

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns in the Manatee-Ruskin Area
5-Season Average 1962-63 to 1966-67 and 1967-68

Item	5-Season Average	1967-68	
Total number of growers	54	12	
Total number of acres	8,725	2,098	
Average acres per grower	162	175	
Average yield per acre (40 lb.)	609	485	
Growing costs:	Acre	Average per Acre	40 lb.
Land rent	$ 40.94	$ 34.08	
Seed	9.16	8.81	
Fertilizer	140.03	149.09	
Spray and dust	90.76	77.55	
Cultural labor	256.08	297.83	
Machine hire	15.86	24.12	
Gas, oil and grease	32.43	37.17	
Repair and maintenance	41.99	43.39	
Depreciation	45.13	59.22	
Licenses and insurance	24.60	24.50	
Interest on production capital (6% - 5 mos)	17.40	18.47	
Interest on capital invested(other than land)	4.51	5.92	
Miscellaneous expense	44.00	42.35	
Total growing cost	$ 762.89	$ 822.50	$ 1.696
Harvesting and marketing costs:			
Picking expense	$ 225.19	$ 212.42	$ 0.438
Grading and packing expense	357.72	388.20	.801
Containers	223.63	169.84	.350
Hauling	50.10	39.42	.081
Selling	71.36	48.52	.100
Total harvesting and marketing cost	$ 928.00	$ 858.40	$ 1.770
Total crop cost	$1690.89	$1680.90	$ 3.466
Crop sales	$2036.69	$1662.56	$ 3.428
Net return	$ 345.80	$ -18.34	$-0.038

Source: Grower records and estimates.

Vine-Ripe Tomatoes
Costs and Returns in the Immokalee-Lee Area
Season 1967-68

Item	1967-68	
Total number of growers	6	
Total number of acres	2,521	
Average acres per grower	420	
Average yield per acre (40 lb.)	505	
Growing costs:	Average per Acre	Average per 40 lb.
Land rent	$ 20.85	
Seed	11.63	
Fertilizer	128.65	
Spray and dust	96.04	
Cultural labor	462.56	
Machine hire	76.41 a/	
Gas, oil and grease	36.04	
Repair and maintenance	73.58	
Depreciation	71.42	
Licenses and insurance	18.11	
Interest on production capital (6% - 5 mos.)	25.92	
Interest on capital invested(other than land)	7.14	
Miscellaneous expense	112.91	
Total growing cost	$1141.26	$ 2.260
Harvesting and marketing costs:		
Picking expense	$ 332.75	$ 0.659
Grading and packing expense	467.27	.925
Containers	278.54	.552
Hauling	60.82	.120
Selling	111.58	.221
Total harvesting and marketing cost	$1250.96	$ 2.477
Total crop cost	$2392.22	$ 4.737
Crop sales	$2843.87	$ 5.631
Net return	$ 451.65	$ 0.894

a/ Reported by 5 growers averaging $91.69 per acre.

Source: Grower records and estimates.

Vine-Ripe Tomatoes
Costs and Returns in the Palm Beach-Broward Area
5-Season Average 1962-63 to 1966-67 and 1967-68

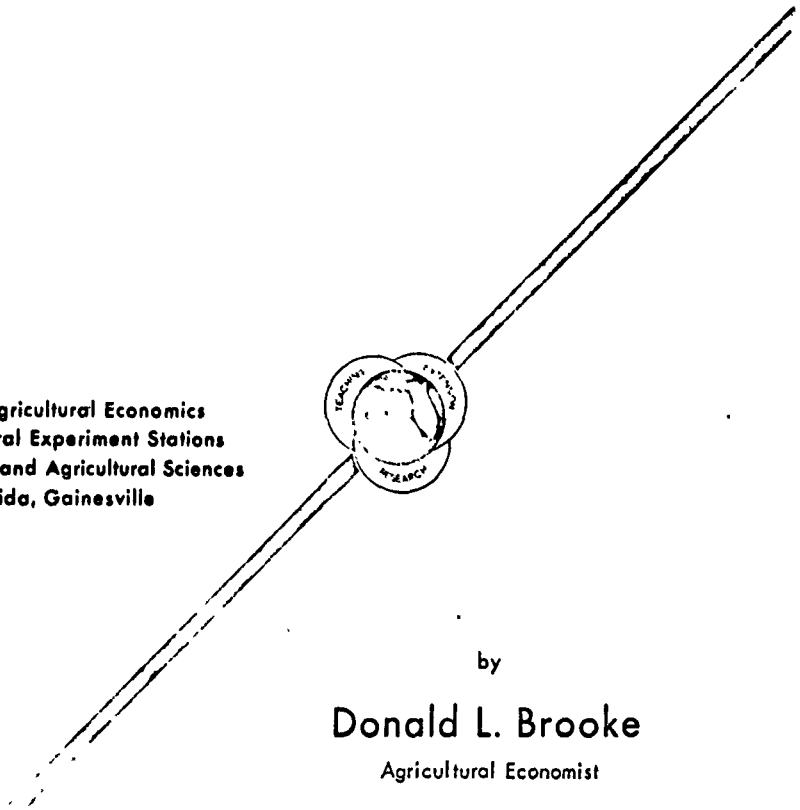
Item	5-Season Average	1967-68	
Total number of growers	74	12	
Total number of acres	10,963	1,842	
Average acres per grower	148	154	
Average yield per acre (40 lb.)	825	1004	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 60.83	$ 80.72	
Seed	13.13	12.61	
Fertilizer	312.49	265.40	
Spray and dust	189.34	223.66	
Cultural labor	914.23	1217.97	
Machine hire	66.27	50.21 a/	
Gas, oil and grease	43.82	40.26	
Repair and maintenance	67.00	82.78	
Depreciation	52.86	56.84	
Licenses and insurance	42.98	60.34	
Interest on production capital (6% - 5 mos.)	45.78	53.09	
Interest on capital invested(other than land)	5.29	5.68	
Miscellaneous expense	121.39	99.75	
Total growing cost	$1935.41	$2239.31	$ 2.230
Harvesting and marketing costs:			
Picking expense	$ 511.09	$ 730.33	$ 0.727
Grading and packing expense	664.01	861.91	.859
Containers	499.57	574.42	.572
Hauling	81.92	105.20	.105
Selling	173.61	203.52	.203
Total harvesting and marketing cost	$1930.20	$2475.38	$ 2.466
Total crop cost	$3865.61	$4714.69	$ 4.696
Crop sales	$4091.35	$7240.51	$ 7.212
Net return	$ 225.74	$2525.82	$ 2.516

a/ Reported by 11 growers averaging $54.77 per acre.

Source: Grower records and estimates.

February 1970 Ag. Econ. Report 2

Costs and Returns from Vegetable Crops in Florida season 1968-1969 with comparisons



Department of Agricultural Economics
Florida Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville

by

Donald L. Brooke
Agricultural Economist

Tomatoes
Costs and Returns in the Dade County Area
5-Season Average 1963-64 to 1967-68 and 1968-69

Item	5-Season Average	1968-69	
Total number of growers	54	5	
Total number of acres	47,391	9,246	
Average acres per grower	878	1,849	
Average yield per acre (40 lb.)	220	221	
Growing costs:	Acre	Average per Acre	40 lb.
Land rent	$ 40.65	$ 27.39	
Seed	6.53	6.08	
Fertilizer	123.26	143.77	
Spray and dust	78.64	86.04	
Cultural labor	93.63	96.06	
Machine hire	14.44	13.17 a/	
Gas, oil and grease	19.11	17.45	
Repair and maintenance	30.29	31.37	
Depreciation	19.72	18.63	
Licenses and insurance	14.62	8.71	
Interest on production capital (6% 5 mos.)	10.80	10.94	
Interest on capital invested (other than land)	1.97	1.86	
Miscellaneous expense	10.67	7.33	
Total growing cost	$464.33	$468.80	$2.121
Harvesting and marketing costs:			
Picking expense	$102.25	$146.25	$0.661
Grading and packing expense	107.06	124.60	.564
Containers	78.07	86.82	.393
Hauling	19.83	32.92	.149
Selling	27.50	33.12	.150
Total harvesting and marketing costs	$334.71	$423.71	$1.917
Total crop cost	$799.04	$892.51	$4.038
Crop sales	$788.22	$894.80	$4.049
Net return	$-10.82	$ 2.29	$0.011

a/ Reported by 4 growers averaging $16.46 per acre.

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Ft. Pierce Area
5-Season Average 1963-64 to 1967-68 and 1968-69

Item	5-Season Average	1968-69	
Total number of growers	34	11	
Total number of acres	14,708	3,145	
Average acres per grower	433	286	
Average yield per acre (40 lb.)	291	263	
Growing costs:	Acre	Average per Acre	40 lb.
Land rent	$ 10.45	$ 16.04	
Seed	7.33	6.58	
Fertilizer	92.67	116.80	
Spray and dust	68.91	67.38	
Cultural labor	138.43	134.47	
Machine hire	50.09	106.11	
Gas, oil and grease	22.33	25.34	
Repair and maintenance	34.59	39.40	
Depreciation	21.70	16.95	
Licenses and insurance	11.20	7.42	
Interest on production capital (6% 5 mos.)	11.19	13.29	
Interest on capital invested (other than land)	2.17	1.70	
Miscellaneous expense	11.55	11.97	
Total growing cost	$ 482.61	$ 563.45	$2.142
Harvesting and marketing costs:			
Picking expense	$ 138.40	$ 209.24	$0.796
Grading and packing expense	125.28	158.13	$ .601
Containers	95.42	102.47	.390
Hauling	43.01	39.24	.149
Selling	34.53	39.44	.150
Total harvesting and marketing cost	$ 436.64	$ 548.52	$2.086
Total crop cost	$ 919.25	$1111.97	$4.228
Crop sales	$1046.80	$1422.05	$5.407
Net return	$ 127.55	$ 310.08	$1.179

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Immokalee-Lee Area
5-Season Average 1963-64 to 1967-68 and 1968-69

Item	5-Season Average	1968-69	
Total number of growers	61	19	
Total number of acres	14,931	3,080	
Average acres per grower	245	162	
Average yield per acre (40 lb.)	284	264	
Growing costs:	Acre	Average per Acre	40 lb
Land rent	13.17	$ 18.78	
Seed	8.41	9.84	
Fertilizer	100.58	115.00	
Spray and dust	73.93	72.05	
Cultural labor	118.30	115.06	
Machine hire	45.43	39.96 a/	
Gas, oil and grease	21.99	23.38	
Repair and maintenance	31.10	40.27	
Depreciation	28.57	25.54	
Licenses and insurance	9.36	7.19	
Interest on production capital (6% 5 mos.)	11.02	11.45	
Interest on capital invested (other than land)	2.86	2.55	
Miscellaneous expense	18.68	16.64	
Total growing cost	483.40	$ 497.71	$1,885
Harvesting and marketing costs:			
Picking expense	$ 141.16	$ 218.13	$0.826
Grading and packing expense	148.37	191.77	.727
Containers	101.67	102.82	.389
Hauling	39.42	51.52	.195
Selling	34.78	41.07	.156
Total harvesting and marketing cost	$ 465.40	$ 605.31	$2.293
Total crop cost	$ 948.80	$1103.02	$4.178
Crop sales	$1062.30	$1458.71	$5.525
Net return	$ 113.50	$ 355.69	$1.347

a/ Reported by 17 growers averaging $44.66 per acre.

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns in the Manatee-Ruskin Area
5-Season Average 1963-64 to 1967-68 and 1968-69

Item	5-Season Average	1968-69	
Total number of growers	56	12	
Total number of acres	9,080	1,945	
Average acres per grower	162	162	
Average yield per acre (40 lb.)	606	439	
Growing costs:	Acre	Average per Acre	40 lb.
Land rent	$ 40.00	$ 31.11	
Seed	8.92	9.99	
Fertilizer	147.39	154.40	
Spray and dust	92.16	85.67	
Cultural labor	270.73	290.06	
Machine hire	18.07	23.13 a/	
Gas, oil and grease	34.17	38.99	
Repair and maintenance	44.39	34.42	
Depreciation	51.49	62.38	
Licenses and insurance	26.36	30.51	
Interest on production capital (6% 5 mos.)	18.20	18.82	
Interest on capital invested (other than land)	5.15	6.24	
Miscellaneous expense	46.01	54.61	
Total growing cost	$ 803.04	$ 840.33	$1.914
Harvesting and marketing costs:			
Picking expense	$ 227.66	$ 213.85	$0.487
Grading and packing expense	379.45	360.35	.821
Containers	223.01	163.97	.374
Hauling	48.80	40.58	.092
Selling	70.15	50.85	.116
Total harvesting and marketing cost	$ 949.07	$ 829.60	$1.890
Total crop cost	$1752.11	$1669.93	$3.804
Crop sales	$2072.54	$2123.39	$4.837
Net return	$ 320.43	$ 453.46	$1.033

a/ Reported by 10 growers averaging $27.76 per acre.

Source: Grower records and estimates.

Vine-Ripe Tomatoes
Costs and Returns in the Immokalee-Lee Area
Season 1968-69

Item	1968-69	
Total number of growers	4	
Total number of acres	978	
Average acres per grower	244	
Average yield per acre (40 lb.)	604	
Growing costs:	Average per Acre	40 lb.
Land rent	$ 42.62	
Seed	11.52	
Fertilizer	244.34	
Spray and dust	178.67	
Cultural labor	775.31	
Machine hire	163.26 a/	
Gas, oil and grease	52.70	
Repair and maintenance	104.63	
Depreciation	89.61	
Licenses and insurance	38.38	
Interest on production capital (6% 5 mos.)	44.69	
Interest on capital invested(other than land)	8.96	
Miscellaneous expense	176.03	
Total growing cost	$1930.72	$ 3.197
Harvesting and marketing costs:		
Picking expense	$ 561.91	$ 0.930
Grading and packing expense	515.03	.853
Containers	306.64	.508
Hauling	112.50	.186
Selling	128.87	.213
Total harvesting and marketing cost	$1624.95	$ 2.690
Total crop cost	$3555.67	$ 5.887
Crop sales	$3327.72	$ 5.510
Net return	$-227.95	$-0.377

a/ Reported by 3 growers averaging $217.68 per acre.

Source: Grower records and estimates.

Vine-Ripe Tomatoes
Costs and Returns in the Palm Beach-Broward Area
5-Season Average 1963-64 to 1967-68 and 1968-69

Item	5-Season Average	1968-69	
Total number of growers	73	15	
Total number of acres	11,482	2,285	
Average acres per grower	157	152	
Average yield per acre (40 lb.)	856	602	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 65.98	$ 88.37	
Seed	13.03	12.85	
Fertilizer	298.96	282.57	
Spray and dust	185.68	195.23	
Cultural labor	1004.66	1141.55	
Machine hire	64.72	136.01	
Gas, oil and grease	43.74	43.52	
Repair and maintenance	70.49	83.96	
Depreciation	54.64	47.90	
Licenses and insurance	51.11	58.02	
Interest on production capital (6% 5 mos.)	47.65	54.48	
Interest on capital invested (other than land)	5.46	4.79	
Miscellaneous expense	107.65	137.05	
Total growing cost	$2013.77	$2286.30	$3.798
Harvesting and marketing costs:			
Picking expense	$ 557.38	$ 542.00	$0.900
Grading and packing expense	687.89	621.59	1.033
Containers	507.65	349.46	.580
Hauling	85.38	80.90	.134
Selling	179.12	121.93	.203
Total harvesting and marketing cost	$2017.42	$1715.88	$2.85[illegible]
Total crop cost	$4031.19	$4002.18	$6.648
Crop sales	$4653.07	$3690.80	$6.131
Net return	$ 621.88	$-311.38	$-.517

Source: Grower records and estimates.

Title Redacted From Public Copy Pending Patent Application

Department of Agricultural Economics
Florida Agricultural Experiment Stations
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University of Florida, Gainesville

Donald L. Brooke

Tomatoes
Costs and Returns in the Dade County Area
5-Season Average 1964-65 to 1968-69 and 1969-70

Item	5-Season Average	1969-70	
Number of growers	9	7	
Number of acres	9587	7384	
Average acres per grower	1042	1055	
Average yield per acre (40 lb.)	214	242	
Growing costs:	Acre	Average per Acre	40 lb.
Land rent	$ 37.79	$ 40.22	
Seed	6.39	7.36	
Fertilizer	126.51	150.42	
Spray and dust	82.46	107.79	
Cultural labor	93.07	128.55	
Machine hire	13.21	18.14	
Gas, oil and grease	18.53	20.59	
Repair and maintenance	30.12	39.25	
Depreciation	19.11	28.26	
Licenses and insurance	13.10	14.18	
Interest on production capital(6% - 5 mos.)	10.74	13.48	
Interest on capital invested(other than land)	1.91	2.83	
Miscellaneous expense	8.46	12.73	
Total growing cost	$461.40	$ 583.80	$2.413
Harvesting and marketing costs:			
Picking expense	$110.10	$ 170.38	$0.704
Grading and packing expense	110.78	161.20	.666
Containers	79.00	96.86	.400
Hauling	22.17	29.76	.123
Selling	28.00	35.10	.145
Total harvesting and marketing cost	$350.05	$ 493.30	$2.038
Total crop cost	$811.45	$1077.10	$4.451
Crop sales	$794.46	$1213.36	$5.014
Net return	$-16.99	$ 136.26	$0.563

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Ft. Pierce Area
5-Season Average 1964-65 to 1968-69 and 1969-70

Item	5-Season Average	1969-70	
Number of growers	7	13	
Number of acres	3006	3765	
Average acres per grower	406	290	
Average yield per acre (40 lb.)	284	169	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 11.44	$ 13.82	
Seed	7.28	9.22	
Fertilizer	100.60	120.27	
Spray and dust	71.89	83.70	
Cultural labor	141.75	173.74	
Machine hire	63.23	96.13	
Gas, oil and grease	22.99	28.60	
Repair and maintenance	35.59	49.73	
Depreciation	21.41	29.85	
Licenses and insurance	10.79	8.73	
Interest on production capital(6% - 5 mos.)	11.93	14.88	
Interest on capital invested(other than land)	2.14	2.99	
Miscellaneous expense	11.50	11.28	
Total growing cost	$512.54	$ 642.94	$ 3.804
Harvesting and marketing costs:			
Picking expense	$ 156.33	$ 157.30	$ 0.931
Grading and packing expense	130.43	111.00	.657
Containers	95.51	67.48	.399
Hauling	41.70	33.16	.196
Selling	34.35	25.30	.150
Total harvesting and marketing cost	$ 458.32	$ 394.24	$ 2.333
Total crop cost	$ 970.86	$1037.18	$ 6.137
Crop sales	$1122.59	$ 879.17	$ 5.202
Net return	$ 151.73	$-158.01	$-0.935

Source: Grower records and estimates.

Tomatoes
Costs and Returns in the Immokalee-Lee Area
5-Season Average 1964-65 to 1968-69 and 1969-70

Item	5-Season Average	1969-70	
Number of growers	14	17	
Number of acres	3130	3896	
Average acres per grower	220	229	
Average yield per acre (40 lb.)	269	146	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 14.71	$ 15.34	
Seed	9.04	8.21	
Fertilizer	106.04	105.44	
Spray and dust	76.57	85.25	
Cultural labor	120.90	172.87	
Machine hire	43.85	51.00 a/	
Gas, oil and grease	22.61	25.56	
Repair and maintenance	34.45	45.15	
Depreciation	27.44	26.25	
Licenses and insurance	9.18	8.01	
Interest on production capital (6% - 5 mos.)	11.42	13.26	
Interest on capital invested (other than land)	2.74	2.63	
Miscellaneous expense	19.54	13.38	
Total growing cost	$ 498.49	$ 572.35	$ 3.920
Harvesting and marketing costs:			
Picking expense	$ 156.46	$ 134.71	$ 0.923
Grading and packing expense	156.04	103.36	.708
Containers	97.42	57.27	.392
Hauling	38.10	30.38	.208
Selling	33.71	24.76	.170
Total harvesting and marketing cost	$ 481.73	$ 350.48	$ 2.401
Total crop cost	$ 980.22	$ 922.83	$ 6.321
Crop sales	$1106.81	$ 796.31	$ 5.454
Net return	$ 126.59	$-126.52	$-0.867

a/ Reported by 15 growers averaging $57.80 per acre.

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns in the Manatee-Ruskin Area
5-Season Average 1964-65 to 1968-69 and 1969-70

Item	5-Season Average	1969-70	
Number of growers	12	12	
Number of acres	1943	2105	
Average acres per grower	165	175	
Average yield per acre (40 lb.)	574	369	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 38.15	$ 31.39	
Seed	9.11	17.75	
Fertilizer	154.46	158.21	
Spray and dust	95.47	88.98	
Cultural labor	282.80	288.16	
Machine hire	21.31	17.33 a/	
Gas, oil and grease	36.26	40.79	
Repair and maintenance	45.56	40.48	
Depreciation	56.47	58.59	
Licenses and insurance	28.29	38.01	
Interest on production capital(6% - 5 mos.)	19.04	19.07	
Interest on capital invested(other than land)	5.65	5.86	
Miscellaneous expense	50.21	41.67	
Total growing cost	$ 842.78	$ 846.29	$2.293
Harvesting and marketing costs:			
Picking expense	$ 227.17	$ 213.78	$0.579
Grading and packing expense	395.05	314.78	.853
Containers	208.48	144.07	.391
Hauling	47.13	34.74	.094
Selling	63.36	49.79	.135
Total harvesting and marketing cost	$ 941.19	$ 757.16	$2.052
Total crop cost	$1783.97	$1603.45	$4.345
Crop sales	$2087.22	$1922.48	$5.210
Net return	$ 303.25	$ 319.03	$0.865

a/ Reported by 10 growers averaging $20.79 per acre.

Source: Grower records and estimates.

Vine-Ripe Tomatoes
Costs and Returns in the Immokalee-Lee Area
Season 1969-70

Item	1969-70	
Number of growers	3	
Number of acres	1040	
Average acres per grower	347	
Average yield per acre (40 lb.)	258	
Growing costs:	Average per Acre	Average per 40 lb.
Land rent	$ 41.77	
Seed	15.88	
Fertilizer	168.06	
Spray and dust	193.87	
Cultural labor	559.88	
Machine hire	92.92 a/	
Gas, oil and grease	31.17	
Repair and maintenance	108.80	
Depreciation	71.56	
Licenses and insurance	42.21	
Interest on production capital(6% - 5 mos.)	33.19	
Interest on capital invested(other than land)	7.16	
Miscellaneous expense	73.05	
Total growing cost	$1439.52	$ 5.580
Harvesting and marketing costs:		
Picking expense	$ 217.91	$ 0.845
Grading and packing expense	280.22	1.086
Containers	114.86	.445
Hauling	52.85	.205
Selling	69.27	.268
Total harvesting and marketing cost	$ 735.11	$ 2.849
Total crop cost	$2174.63	$ 8.429
Crop sales	$1435.75	$ 5.565
Net return	$-738.88	$-2.864

a/ Reported by 2 growers averaging $139.38 per acre.

Source: Grower records and estimates.

Vin- [illegible]
Costs and [illegible] Area
5-Season Average 1964-65 to 1968-69 and 1969-70

Item	5-Season Average	1969-70
Number of growers	15	9
Number of acres	2519	1670
Average acres per grower	164	186
Average yield per acre (40 lb.)	818	419
Growing costs:	Average per Acre	Average per Acre
Land rent	$ 70.81	$ 99.92
Seed	13.22	24.03
Fertilizer	294.18	321.01
Spray and dust	192.58	253.63
Cultural labor	1033.44	1262.46
Machine hire	73.05	132.87
Gas, oil and grease	43.17	56.62
Repair and maintenance	75.13	109.86
Depreciation	50.97	48.24
Licenses and insurance	57.00	25.76
Interest on production capital(6% - 5 mos.)	48.97	59.10
Interest on capital invested(other than land)	5.10	4.82
Miscellaneous expense	106.14	77.77
Total growing cost	$2063.76	$2476.09
Harvesting and marketing costs:		
Picking expense	$ 579.48	$ 402.14
Grading and packing expense	677.22	373.82
Containers	471.88	231.06
Hauling	88.07	72.01
Selling	165.11	83.23
Total harvesting and marketing cost	$1981.76	$1162.26
Total crop cost	$4045.52	$3638.35
Crop sales	$4577.01	$3234.40
Net return	$ 531.49	$-403.95

Item	40 lb.	40 lb.
Land rent	$ 0.960	
Seed	.892	
Fertilizer	.551	
Spray and dust	.172	
Cultural labor	.198	
Machine hire		
Gas, oil and grease		
Repair and maintenance		
Depreciation		
Licenses and insurance		
Interest on production capital(6% - 5 mos.)		
Interest on capital invested(other than land)		
Miscellaneous expense		
Total growing cost	$ 5.910	
Harvesting and marketing costs:		
Total harvesting and marketing cost	$ 2.773	
Total crop cost	$ 8.683	
Crop sales	$ 7.719	
Net return	$-0.964	

Source: Grower records and estimates.

February 1972 Ag Econ. Report 31

Costs And Returns From Vegetable Crops in Florida Season 1970-1971 With Comparisons

Department of Agricultural Economics
Florida Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville

Donald L. Brooke

Tomatoes

Costs and Returns per acre in the Dade County Area
5-Season Average 1966-70 and 1970-71

Item	5-Season Average	1970-71	
Number of growers	8	7	
Number of acres	8862	7839	
Average acres per grower	1108	1120	
Average yield per acre (40 lb.)	229	300	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 38.87	$ 36.25	
Seed	6.34	9.10	
Fertilizer	130.58	154.38	
Spray and dust	88.80	108.52	
Cultural labor	100.42	140.99	
Machine hire	15.93	26.64	
Gas, oil and grease	19.24	25.90	
Repair and maintenance	32.68	44.21	
Depreciation	20.79	38.34	
Licenses and insurance	13.35	13.99	
Interest on production capital (6% - 5 mos.)	11.38	14.30	
Interest on capital invested (other than land)	2.08	3.83	
Miscellaneous expense	8.92	12.16	
Total growing cost	489.38	628.61	$2.095
Harvesting and marketing costs:			
Picking expense	130.00	199.45	.665
Grading and packing expense	128.61	250.09	.833
Containers	86.45	115.22	.384
Hauling	25.32	39.19	.131
Selling	30.76	39.20	.131
Total harvesting and marketing cost	401.14	643.15	2.144
Total crop cost	890.52	1271.76	4.239
Crop sales	925.89	1456.73	4.856
Net return	$ 35.37	$ 184.97	$0.617

	1970-71 Range per Acre From	To
Yield (40 lb.)	190	362
Total growing cost	$ 479.97	$ 721.69
Total harvesting and marketing cost	336.30	828.33
Total crop cost	816.27	1515.72
Crop sales	788.11	2067.45
Net return	$ -28.16	$ 551.73

Source: Grower records and estimates.

Tomatoes
Costs and Returns per acre in the Ft. Pierce Area
5-Season Average 1966-70 and 1970-71

Item	5-Season Average	1970-71	
Number of growers	8	18	
Number of acres	3218	4665	
Average acres per grower	402	259	
Average yield per acre (40 lb.)	253	216	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 12.00	$ 12.35	
Seed	7.91	24.44	
Fertilizer	106.43	109.71	
Spray and dust	76.58	81.28	
Cultural labor	151.80	152.90	
Machine hire	70.71	99.67	
Gas, oil and grease	24.53	30.48	
Repair and maintenance	39.35	49.11	
Depreciation	22.53	28.62	
Licenses and insurance	10.35	11.19	
Interest on production capital (6% - 5 mos.)	12.74	14.84	
Interest on capital invested (other than land)	2.26	2.86	
Miscellaneous expense	9.87	22.50	
Total growing cost	547.06	639.95	$2.963
Harvesting and marketing costs:			
Picking expense	157.22	202.97	.940
Grading and packing expense	125.73	138.05	.639
Containers	85.75	91.38	.423
Hauling	37.77	45.58	.211
Selling	31.09	33.07	.153
Total harvesting and marketing cost	437.56	511.05	2.366
Total crop cost	984.62	1151.00	5.329
Crop sales	1041.54	1165.27	5.395
Net return	$ 56.92	$ 14.27	$0.066

	1970-71 Range per Acre From	To
Yield (40 lb.)	119	298
Total growing cost	$ 441.05	$ 847.17
Total harvesting and marketing cost	240.38	751.91
Total crop cost	745.16	1534.77
Crop sales	556.08	2388.85
Net return	$-443.64	$1039.01

Source: Grower records and estimates.

Tomatoes
Costs and Returns per acre in the Immokalee-Lee Area
5-Season Average 1966-70 and 1970-71

Item	5-Season Average	1970-71	
Number of growers	16	16	
Number of acres	3471	2337	
Average acres per grower	217	146	
Average yield per acre (40 lb.)	247	296	
Growing costs:		Average per Acre	40 lb.
Land rent	$ 15.23	$ 17.93	
Seed	8.72	15.53	
Fertilizer	104.44	131.83	
Spray and dust	77.89	94.28	
Cultural labor	128.69	145.77 [1]	
Machine hire	41.02	67.05	
Gas, oil and grease	23.82	28.67	
Repair and maintenance	37.87	45.87	
Depreciation	28.39	33.62	
Licenses and insurance	8.95	7.86	
Interest on production capital (6% - 5 mos.)	11.53	14.34	
Interest on capital invested (other than land)	2.84	3.36	
Miscellaneous expense	14.47	18.81	
Total growing cost	503.86	624.92	$2.111
Harvesting and marketing costs:			
Picking expense	160.24	257.08	.869
Grading and packing expense	155.22	222.42	.751
Containers	90.86	126.10	.426
Hauling	37.70	49.98	.169
Selling	32.34	51.62	.174
Total harvesting and marketing cost	476.36	707.20	2.389
Total crop cost	980.22	1332.12	4.500
Crop sales	1071.12	1413.43	4.775
Net return	$ 90.90	$ 81.31	$0.275

	1970-71 Range per Acre From	To
Yield (40 lb.)	133	500
Total growing cost	$ 426.74	$ 832.12
Total harvesting and marketing cost	305.90	1175.00
Total crop cost	872.48	1704.03
Crop sales	581.07	2250.00
Net return	$ 59.05	$ 642.89

[1] Reported by 15 growers averaging $71.52 per acre.

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per acre in the East Coast Area
5-Season Average 1966-70 and 1970-71

Item	5-Season Average	1970-71	
Number of growers	13	8	
Number of acres	2303	2163	
Average acres per grower	177	270	
Average yield per acre (40 lb.)	740	879	
Growing costs:	Average per Acre	Acre	40 lb.
Land rent	$ 76.88	$ 77.52	
Seed	15.03	39.35	
Fertilizer	292.23	243.68	
Spray and dust	206.57	215.60	
Cultural labor	1082.10	834.06	
Machine hire	84.31	126.63	
Gas, oil and grease	45.31	56.52	
Repair and maintenance	82.27	114.28	
Depreciation	49.78	78.35	
Licenses and insurance	52.75	36.76	
Interest on production capital (6% - 5 mos.)	50.84	47.79	
Interest on capital invested (other than land)	4.98	7.84	
Miscellaneous expense	96.10	167.30	
Total growing cost	2139.15	2045.68	$2.327
Harvesting and marketing costs:			
Picking expense	561.63	903.05	1.027
Grading and packing expense	620.77	516.18	.587
Containers	423.58	362.02	.412
Hauling	86.79	166.53	.190
Selling	146.46	197.38	.225
Total harvesting and marketing cost	1839.23	2145.16	2.441
Total crop cost	3978.38	4190.84	4.768
Crop sales	4372.98	5415.72	6.161
Net return	$ 394.60	$1224.88	$1.393

	1970-71 Range per Acre	
	From	To
Yield (40 lb.)	306	1533
Total growing cost	$1274.95	$2822.81
Total harvesting and marketing cost	705.40	3985.80
Total crop cost	1980.35	6406.27
Crop sales	1876.71	8065.00
Net return	$-203.31	$1770.00

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per acre in the Immokalee-Lee Area
5-Season Average 1966-70 and 1970-71

Item	5-Season Average	1970-71	
Number of growers	4	8	
Number of acres	1380	1286	
Average acres per grower	345	143	
Average yield per acre (40 lb.)	494	558	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 34.30	$ 30.65	
Seed	12.01	44.77	
Fertilizer	189.97	219.38	
Spray and dust	162.21	202.55	
Cultural labor	588.79	491.59	
Machine hire	105.74	59.86 [1]	
Gas, oil and grease	46.77	65.46	
Repair and maintenance	102.30	91.49	
Depreciation	88.06	57.75	
Licenses and insurance	34.83	39.52	
Interest on production capital (6% - 5 mos.)	35.27	33.70	
Interest on capital invested (other than land)	8.81	5.77	
Miscellaneous expense	133.90	102.77	
Total growing cost	1542.96	1445.26	$2.590
Harvesting and marketing costs:			
Picking expense	436.38	631.47	1.132
Grading and packing expense	507.10	490.94	.880
Containers	281.10	234.73	.421
Hauling	73.56	100.06	.179
Selling	114.64	96.31	.172
Total harvesting and marketing cost	1412.78	1553.51	2.784
Total crop cost	2955.74	2998.77	5.374
Crop sales	2948.42	3605.22	6.461
Net return	$ -7.32	$ 606.45	$1.087

	1970-71 Range per Acre From	To
Yield (40 lb.)	229	756
Total growing cost	$ 859.48	$2349.23
Total harvesting and marketing cost	652.65	2230.20
Total crop cost	1512.13	4279.23
Crop sales	1316.75	5839.46
Net return	$-195.38	$1560.53

[1] Reported by 5 growers averaging $107.74 per acre.

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per acre in the Manatee-Ruskin Area
5-Season Average 1966-70 and 1970-71

Item	5-Season Average	1970-71	
Number of growers	12	11	
Number of acres	2030	2140	
Average acres per grower	169	195	
Average yield per acre (40 lb.)	513	365	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 35.33	$ 30.74	
Seed	10.79	34.33	
Fertilizer	157.63	154.67	
Spray and dust	91.48	86.05	
Cultural labor	283.90	315.33	
Machine hire	20.82	17.77	
Gas, oil and grease	37.55	43.69	
Repair and maintenance	44.58	60.89	
Depreciation	57.02	48.42	
Licenses and insurance	30.58	42.01	
Interest on production capital (6% - 5 mos.)	19.03	20.86	
Interest on capital invested (other than land)	5.70	4.84	
Miscellaneous expense	48.43	48.80	
Total growing cost	842.84	908.40	$2.489
Harvesting and marketing costs:			
Picking expense	222.88	224.72	.616
Grading and packing expense	385.05	383.75	1.051
Containers	183.06	154.73	.424
Hauling	44.08	47.51	.130
Selling	55.45	55.46	.152
Total harvesting and marketing cost	890.52	866.17	2.373
Total crop cost	1733.36	1774.57	4.862
Crop sales	1958.36	2228.12	6.104
Net return	$ 225.00	$ 453.55	$1.242

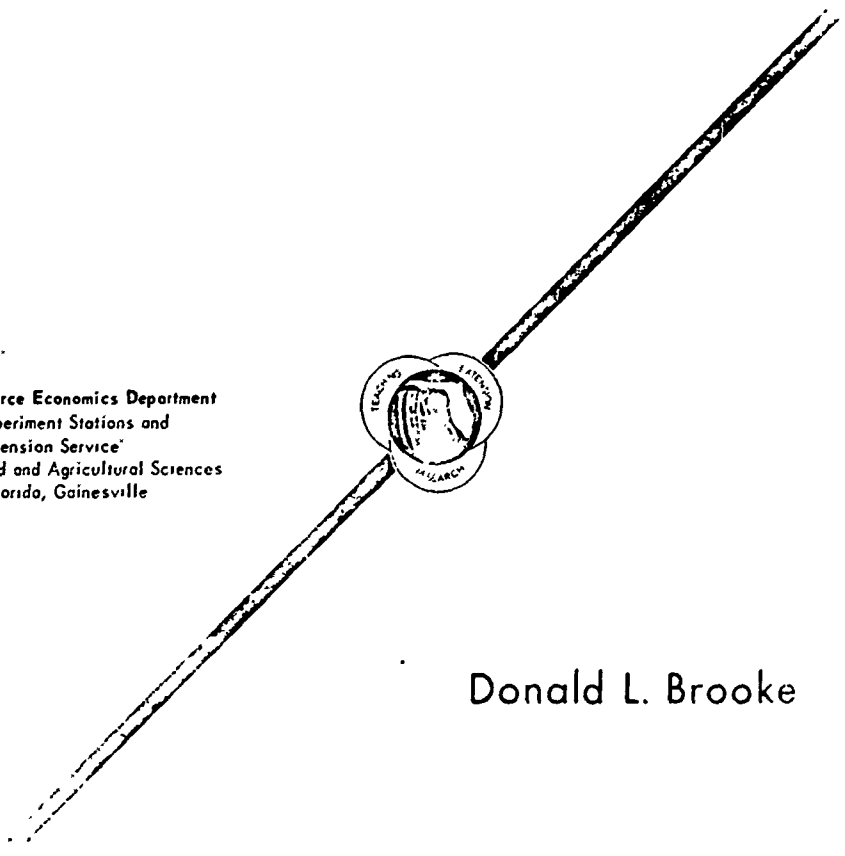
	1970-71 Range per Acre	
	From	To
Yield (40 lb)	191	490
Total growing cost	$ 577.63	$1266.67
Total harvesting and marketing cost	464.00	1174.11
Total crop cost	1331.30	2408.42
Crop sales	1222.02	3380.41
Net return	$-283.31	$1075.42

Source: Grower records and estimates.

March 1973 Economics Report 44

Costs and Returns from Vegetable Crops in Florida Season 1971-72 with Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations and
Cooperative Extension Service
Institute of Food and Agricultural Sciences
University of Florida, Gainesville



Donald L. Brooke

Tomatoes
Costs and Returns per acre in the Dade County Area
5-Season Average 1967-71 and 1971-72

Item	5-Season Average	1971-72	
Number of growers	7	8	
Number of acres	8622	7398	
Average acres per grower	1232	925	
Average yield per acre (40 lb.)	247	252	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 38.31	$ 35.62	
Seed	6.92	13.30	
Fertilizer	137.75	150.39	
Spray and dust	95.00	144.92	
Cultural labor	111.27	125.32	
Machine hire	19.33	26.67	
Gas, oil and grease	20.69	20.05	
Repair and maintenance	35.18	39.73	
Depreciation	24.39	40.30	
Licenses and insurance	13.43	16.86	
Interest on production capital (6% - 5 mos.)	12.18	14.55	
Interest on capital invested (other than land)	2.44	4.03	
Miscellaneous expense	9.43	9.22	
Total growing cost	526.32	640.96	$2.544
Harvesting and marketing costs:			
Picking expense	149.39	160.81	.638
Grading and packing expense	161.66	171.54	.681
Containers	94.73	106.25	.421
Hauling	29.95	31.26	.124
Other	-	13.36	.053
Selling	33.72	44.29	.176
Total harvesting and marketing cost	469.45	527.51	2.093
Total crop cost	995.77	1168.47	4.637
Crop sales	1090.77	1207.04	4.790
Net return	$ 95.00	$ 38.57	$0.153

	1971-72 Range per Acre From	To
Yield (40 lb.)	146	400
Total growing cost	$ 546.84	$ 838.69
Total harvesting and marketing cost	315.65	801.20
Total crop cost	864.54	1471.79
Crop sales	742.20	1880.00
Net return	$-122.34	$ 408.21

Source: Grower records and estimates.

Tomatoes
Costs and Returns per acre in the Ft. Pierce Area
5-Season Average 1967-71 and 1971-72

Item	5-Season Average	1971-72	
Number of growers	10	17	
Number of acres	3407	4526	
Average acres per grower	341	266	
Average yield per acre (40 lb.)	239	247	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 12.55	$ 18.08	
Seed	11.07	10.89	
Fertilizer	108.98	121.16	
Spray and dust	75.90	145.65	
Cultural labor	152.96	193.56	
Machine hire	80.74	99.62	
Gas, oil and grease	25.97	37.63	
Repair and maintenance	41.70	74.47	
Depreciation	22.68	27.42	
Licenses and insurance	10.38	8.97	
Interest on production capital (6% - 5 mos.)	13.33	18.05	
Interest on capital invested (other than land)	2.27	2.74	
Miscellaneous expense	13.03	12.07	
Total growing cost	571.56	770.31	$3.118
Harvesting and marketing costs:			
Picking expense	165.18	220.70	.894
Grading and packing expense	129.39	141.60	.573
Containers	83.84	94.81	.384
Hauling	37.42	41.91	.170
Other	-	12.68	.051
Selling	30.73	64.94	.263
Total harvesting and marketing cost	446.56	576.64	2.335
Total crop cost	1018.12	1346.95	5.453
Crop sales	1063.55	1415.39	5.730
Net return	$ 45.43	$ 68.44	$0.277

	1971-72 Range per Acre From	To
Yield (40 lb.)	28	576
Total growing cost	$ 497.13	$1255.46
Total harvesting and marketing cost	81.86	1261.65
Total crop cost	788.39	1893.94
Crop sales	104.44	3221.72
Net return	$-777.33	$1327.78

Source: Grower records and estimates.

Tomatoes
Costs and Returns per acre in the Immokalee-Lee Area
5-Season Average 1967-71 and 1971-72

Item	5-Season Average	1971-72	
Number of growers	16	12	
Number of acres	3269	1549	
Average acres per grower	204	129	
Average yield per acre (40 lb.)	251	221	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 16.13	$ 16.88	
Seed	10.18	8.58	
Fertilizer	113.09	146.74	
Spray and dust	83.52	117.89	
Cultural labor	136.18	143.77	
Machine hire	44.49	65.11	
Gas, oil and grease	25.55	28.77	
Repair and maintenance	41.21	62.93	
Depreciation	29.49	27.18	
Licenses and insurance	8.48	7.56	
Interest on production capital (6% - 5 mos.)	12.38	15.67	
Interest on capital invested (other than land)	2.95	2.72	
Miscellaneous expense	16.53	28.81	
Total growing cost	540.18	672.61	$3.044
Harvesting and marketing costs:			
Picking expense	178.86	213.83	.968
Grading and packing expense	172.61	179.81	.814
Containers	95.63	93.81	.424
Hauling	40.86	55.07	.249
Other	-	11.73	.053
Selling	36.32	48.66	.220
Total harvesting and marketing cost	524.28	602.91	2.728
Total crop cost	1064.46	1275.52	5.772
Crop sales	1151.61	1294.57	5.858
Net return	$ 87.15	$ 19.05	$0.086

	1971-72 Range per Acre From	To
Yield (40 lb.)	8	329
Total growing cost	$ 439.73	$ 974.10
Total harvesting and marketing cost	39.23	925.92
Total crop cost	1013.33	1723.85
Crop sales	43.13	1984.72
Net return	$-970.20	$ 594.96

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per acre in the East Coast Area
5-Season Average 1967-71 and 1971-72

Item	5-Season Average	1971-72	
Number of growers	12	9	
Number of acres	2082	2014	
Average acres per grower	174	224	
Average yield per acre (40 lb.)	761	719	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 82.62	$ 102.81	
Seed	20.21	20.53	
Fertilizer	282.18	230.97	
Spray and dust	215.22	278.34	
Cultural labor	1064.16	956.97	
Machine hire	100.76	156.67	
Gas, oil and grease	48.08	48.63	
Repair and maintenance	94.06	133.25	
Depreciation	56.29	77.91	
Licenses and insurance	48.52	33.24	
Interest on production capi al (6% - 5 mos.)	51.70	51.86	
Interest on capital invested (other than land)	5.63	7.79	
Miscellaneous expense	112.05	113.15	
Total growing cost	2181.48	2212.12	$3.077
Harvesting and marketing costs:			
Picking expense	644.77	667.04	.928
Grading and packing expense	609.61	416.07	.579
Containers	404.40	270.86	.377
Hauling	106.33	120.85	.168
Other	-	38.08	.053
Selling	155.53	184.47	.256
Total harvesting and marketing cost	1920.64	1697.37	2.361
Total crop cost	4102.12	3909.49	5.438
Crop sales	4792.33	4221.73	5.872
Net return	$ 690.21	$ 312.24	$0.434

	1971-72 Range per Acre From	To
Yield (40 lb.)	385	1050
Total growing cost	$1611.45	$3261.75
Total harvesting and marketing cost	826.51	2586.12
Total crop cost	2845.62	5298.81
Crop sales	2142.18	6165.95
Net return	$-757.07	$1573.59

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per Acre in the Immokalee-Lee Area
5-Season Average 1967-71 and 1971-72

Item	5-Season Average	1971-72	
Number of growers	5	10	
Number of acres	1362	2466	
Average acres per grower	272	247	
Average yield per acre (40 lb.)	507	623	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 33.57	$ 27.55	
Seed	18.56	48.24	
Fertilizer	195.85	208.85	
Spray and dust	170.28	298.76	
Cultural labor	569.35	513.26	
Machine hire	96.56	84.98	
Gas, oil and grease	50.51	51.07	
Repair and maintenance	100.14	94.16	
Depreciation	82.00	87.02	
Licenses and insurance	35.77	49.24	
Interest on production capital (6% - 5 mos.)	34.96	37.70	
Interest on capital invested (other than land)	8.20	8.70	
Miscellaneous expense	127.67	139.67	
Total growing cost	1523.42	1649.20	$2.647
Harvesting and marketing costs:			
Picking expense	475.40	697.78	1.120
Grading and packing expense	503.87	573.16	.920
Containers	271.83	282.79	.454
Hauling	78.86	103.69	.167
Other	-	33.02	.053
Selling	110.97	94.33	.151
Total harvesting and marketing cost	1440.93	1784.77	2.865
Total crop cost	2964.35	3433.97	5.512
Crop sales	3079.79	4012.82	6.441
Net return	$ 115.44	$ 578.85	$0.929

	1971-72 Range per Acre	
	From	To
Yield (40 lb.)	374	1032
Total growing cost	$ 994.64	$2585.46
Total harvesting and marketing cost	942.55	3233.10
Total crop cost	1937.19	5506.29
Crop sales	1864.97	7502.74
Net return	$-647.86	$1996.45

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per acre in the Manatee-Ruskin Area
5-Season Average 1967-71 and 1971-72

Item	5-Season Average	1971-72	
Number of growers	12	11	
Number of acres	2076	2227	
Average acres per grower	173	202	
Average yield per acre (40 lb.)	449	423	
Growing costs:	Average per Acre	Average per Acre	40 lb.
Land rent	$ 33.69	$ 31.03	
Seed	16.36	24.06	
Fertilizer	155.00	169.90	
Spray and dust	86.11	148.37	
Cultural labor	292.28	347.41	
Machine hire	19.83	19.92	
Gas, oil and grease	39.19	47.96	
Repair and maintenance	45.71	67.80	
Depreciation	55.61	43.21	
Licenses and insurance	32.19	55.35	
Interest on production capital (6% - 5 mos.)	19.17	24.45	
Interest on capital invested (other than land)	5.56	4.32	
Miscellaneous expense	46.49	66.19	
Total growing cost	847.19	1049.97	$2.482
Harvesting and marketing costs:			
Picking expense	216.81	297.29	.703
Grading and packing expense	369.31	480.08	1.135
Containers	169.69	193.78	.458
Hauling	41.87	60.95	.144
Other	-	22.41	.053
Selling	52.70	96.12	.227
Total harvesting and marketing cost	850.38	1150.63	2.720
Total crop cost	1697.57	2200.60	5.202
Crop sales	1989.32	2848.70	6.734
Net return	$ 291.75	$ 648.10	$1.532

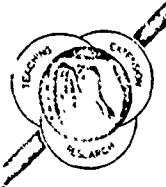
	1971-72 Range per Acre From	To
Yield (40 lb.)	117	835
Total growing cost	$ 630.01	$1734.25
Total harvesting and marketing cost	378.73	2156.81
Total crop cost	1008.74	3854.90
Crop sales	1123.64	5068.56
Net return	$ 114.90	$1700.89

Source: Grower records and estimates.

March 1974 Economics Report 59

Costs and Returns from Vegetable Crops in Florida, Season 1972-73 With Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville 32611



D. L. Brooke

Sugarcane

Costs and returns per acre in the Palm Beach-Broward Area
[Comparison over 5-season 1968-72 and 1972-73]

Item	5-Season Average	1972-73
Number of growers	6	6
Number of acres	178	303
Average acres per grower	28	50
Average yield per acre (bushels)	127	111
Growing costs:	Average per Acre	Average per Acre	Bushel
Land rent	$ 40.14	$ 46.25	
Seed	7.72	5.61	
Fertilizer	53.82	62.39	
Spray and dust	41.53	38.08	
Cultural labor	60.94	62.64	
Machine hire	17.43	27.09	
Gas, oil and grease	14.99	17.85	
Repair and maintenance	21.98	25.25	
Depreciation	16.37	17.65	
Licenses and insurance	12.59	26.18	
Interest on production capital (6% - 4 months)	5.65	6.70	
Interest on capital invested (other than land)	1.64	1.76	
Miscellaneous expense	11.53	23.54	
Total growing cost	306.33	360.99	$ 3.252
Harvesting and marketing costs:			
Picking and packing expense	131.52.	125.35	1.129
Containers	89.38	90.10	.812
Hauling	18.65	13.34	.120
Selling	23.41	28.09	.253
Total harvesting and marketing cost	262.96	256.88	2.314
Total crop cost	569.29	617.87	5.566
Crop sales	668.10	811.70	7.312
Net return	$ 98.81	$ 193.83	$ 1.746

	1972-73 Range per acre From	To
Yield (bushels)	59	187
Total growing cost	$ 219.21	$ 543.06
Total harvesting and marketing cost	121.41	461.81
Total crop cost	387.59	827.03
Crop sales	206.58	1453.89
Net return	$-181.01	$ 637.25

Source: Grower records and estimates.

Tomatoes
Costs and Returns per acre in the Dade County Area
5-Season Average 1968-72 and 1972-73

Item	5-Season Average	1972-73	
Number of growers	7	6	
Number of acres	8001	6640	
Average acres per grower	1143	1107	
Average yield per acre (30 lb.)	335	303	
Growing costs:	Average per Acre	Average per Acre	30 lb.
Land rent	$ 37.00	$ 32.40	
Seed	8.42	9.12	
Fertilizer	143.47	141.92	
Spray and dust	108.30	141.55	
Cultural labor	116.34	112.25	
Machine hire	20 37	19.21	
Gas, oil and grease	20.35	18.47	
Repair and maintenance	35.95	40.26	
Depreciation	28.86	28.50	
Licenses and insurance	13.01	19.76	
Interest on production capital (6% - 5 months)	12.82	13.62	
Interest on capital invested (other than land)	2.88	2.85	
Miscellaneous expense	9.49	10.01	
Total growing cost	557.26	589.92	$1.947
Harvesting and marketing costs:			
Picking expense	160.51	189.33	.625
Grading and packing expense	167.76	197.57	.652
Containers	98.80	127.12	.419
Hauling	32.67	37.18	.123
Other	2.67	15.13	.050
Selling	36.59	35.59	.117
Total harvesting and marketing cost	499.00	601.92	1.986
Total crop cost	1056.26	1191.84	3.933
Crop sales	1166.98	1318.74	4.352
Net return	$ 110.72	$ 126.90	$0.419

	1972-73 Range per acre	
	From	To
Yield (30 lb.)	176	450
Total growing cost	$ 474.13	$ 694.21
Total harvesting and marketing cost	388.96	817.50
Total crop cost	863.09	1400.26
Crop sales	741.67	1957.50
Net return	$-121.42	$ 594.33

Source: Grower records and estimates.

Tomatoes

Costs and returns per acre in the Ft. Pierce Area
5-Season Average 1968-72 and 1972-73

Item	5-Season Average	1972-73	
Number of growers	12	14	
Number of acres	3744	3339	
Average acres per grower	312	238	
Average yield per acre (30 lb.)	296	301	
Growing costs:	Average per Acre	Average per Acre	30 lb.
Land rent	$ 13.95	$ 20.30	
Seed	11.87	13.92	
Fertilizer	113.85	115.30	
Spray and dust	89.28	103.60	
Cultural labor	163.44	176.86	
Machine hire	91.62	91.50	
Gas, oil and grease	29.09	34.82	
Repair and maintenance	49.06	62.35	
Depreciation	23.42	27.51	
Licenses and insurance	9.48	14.64	
Interest on production capital (6% - 5 months)	14.59	16.25	
Interest on capital invested (other than land)	2.34	2.75	
Miscellaneous expense	12.18	16.93	
Total growing cost	624.17	696.73	$ 2.315
Harvesting and marketing costs:			
Picking expense	179.78	228.23	.758
Grading and packing expense	129.25	209.09	.695
Containers	84.14	108.76	.361
Hauling	37.03	40.65	.135
Other	2.54	15.06	.050
Selling	37.61	38.06	.126
Total harvesting and marketing cost	470.35	639.85	2.125
Total crop cost	1094.52	1336.58	4.440
Crop sales	1107.73	1057.36	3.513
Net return	$ 13.21	$-279.22	$-0.927

	1972-73 Range per acre From	To
Yield (30 lb.)	125	489
Total growing cost	$ 420.79	$1099.13
Total harvesting and marketing cost	246.74	1087.15
Total crop cost	816.78	1940.42
Crop sales	360.57	2101.46
Net return	$-854.77	$ 264.43

Source: Grower records and estimates.

Tomatoes
Costs and Returns per acre in the Immokalee-Lee Area
5-Season Average 1968-72 and 1972-73

Item	5-Season Average	1972-73	
Number of growers	15	10	
Number of acres	2880	2700	
Average acres per grower	192	270	
Average yield per acre (30 lb.)	311	311	
Growing costs:	Average per Acre	Average per Acre	30 lb.
Land rent	$ 16.69	$ 18.12	
Seed	10.16	29.04	
Fertilizer	120.41	150.25	
Spray and dust	89.87	120.06	
Cultural labor	140.51	216.00	
Machine hire	50.49	96.96	
Gas, oil and grease	26.30	38.62	
Repair and maintenance	46.67	60.64	
Depreciation	28.86	35.69	
Licenses and insurance	7.98	15.85	
Interest on production capital (6% - 5 months)	13.22	19.63	
Interest on capital invested (other than land)	2.89	3.57	
Miscellaneous expense	19.72	39.80	
Total growing cost	573.77	844.23	$ 2.715
Harvesting and marketing costs:			
Picking expense	192.15	225.69	.725
Grading and packing expense	170.19	230.09	.740
Containers	93.87	116.22	.374
Hauling	44.05	56.33	.181
Other	2.34	15.57	.050
Selling	40.09	41.69	.134
Total harvesting and marketing cost	542.69	685.59	2.204
Total crop cost	1116.46	1529.82	4.919
Crop sales	1181.05	1216.02	3.910
Net return	$ 64.59	$-313.80	$-1.009

	1972-73 Range per acre From	To
Yield (30 lb.)	155	600
Total growing cost	$ 483.33	$ 1482.25
Total harvesting and marketing cost	364.55	1226.35
Total crop cost	1062.88	2708.66
Crop sales	476.62	2952.00
Net return	$-817.66	$ 650.67

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per acre in the East Coast Area
5-Season Average 1968-72 and 1972-73

Item	5-Season Average	1972-73	
Number of growers	11	8	
Number of acres	2068	1862	
Average acres per grower	188	233	
Average yield per acre (30 lb.)	967	729	
Growing costs:	Average per Acre	Average per Acre	30 lb.
Land rent	$ 89.87	$ 74.26	
Seed	21.88	27.40	
Fertilizer	268.73	224.05	
Spray and dust	231.29	242.52	
Cultural labor	1082.60	768.21	
Machine hire	120.48	132.05	
Gas, oil and grease	49.11	49.86	
Repair and maintenance	104.83	90.40	
Depreciation	61.85	91.03	
Licenses and insurance	42.82	40.23	
Interest on production capital (6% - 5 months)	53.26	44.29	
Interest on capital invested (other than land)	6.18	9.10	
Miscellaneous expense	119.00	122.75	
Total growing cost	2251.90	1916.15	$ 2.628
Harvesting and marketing costs:			
Picking expense	648.91	504.85	.693
Grading and packing expense	557.91	488.36	.670
Containers	357.56	273.58	.375
Hauling	109.10	111.14	.152
Other	7.62	37.56	.052
Selling	158.11	124.63	.171
Total harvesting and marketing cost	1839.21	1540.12	2.113
Total crop cost	4091.11	3456.27	4.741
Crop sales	4760.63	3433.25	4.709
Net return	$ 669.52	$ -23.02	$-0.032

	1972-73 Range per acre From	To
Yield (30 lb.)	321	1619
Total growing cost	$1246.26	$2833.69
Total harvesting and marketing cost	876.53	3057.90
Total crop cost	2144.80	5728.77
Crop sales	1570.50	6539.19
Net return	$-685.88	$ 811.69

Source: Grower records and estimates.

Staked Tomatoes
Costs and Returns per acre in the Immokalee-Lee Area
5-Season Average 1968-72 and 1972-73

Item	5-Season Average	1972-73	
Number of growers	6	11	
Number of acres	1554	2331	
Average acres per grower	259	212	
Average yield per acre (30 lb.)	680	851	
Growing costs:		Average per Acre	Acre 30 lb.
Land rent	$ 32.69	$ 34.72	
Seed	26.41	82.71	
Fertilizer	193.85	197.48	
Spray and dust	193.98	307.53	
Cultural labor	560.52	643.40	
Machine hire	95.48	63.43	
Gas, oil and grease	47.29	55.88	
Repair and maintenance	94.53	101.18	
Depreciation	75.47	80.07	
Licenses and insurance	37.49	60.80	
Interest on production capital (6% - 5 months)	35.04	44.37	
Interest on capital invested (other than land)	7.55	8.01	
Miscellaneous expense	120.39	227.64	
Total growing cost	1521.19	1907.22	$2.241
Harvesting and marketing costs:			
Picking expense	488.37	722.47	.849
Grading and packing expense	465.33	692.97	.814
Containers	243.51	336.30	.395
Hauling	85.98	96.69	.114
Other	6.60	42.56	.050
Selling	100.07	124.88	.147
Total harvesting and marketing cost	1389.86	2015.87	2.369
Total crop cost	2911.05	3923.09	4.610
Crop sales	3045.07	4420.69	5.195
Net return	$ 134.02	$ 497.60	$0.585

	1972-73 Range per acre From	To
Yield (30 lb.)	585	1140
Total growing cost	$ 916.07	$2656.54
Total harvesting and marketing cost	1311.50	2511.62
Total crop cost	2227.57	5120.73
Crop sales	2610.80	6133.12
Net return	$-444.08	$1144.97

Source: Grower records and estimates.

Staked Tomatoes*
Costs and Returns per acre in the Manatee-Ruskin Area
5-Season Average 1968-72 and 1972-73

Item	5-Season Average	1972-73 Average per Acre	1972-73 Average per 30 lb.
Number of growers	12	11	
Number of acres	2172	2310	
Average acres per grower	181	210	
Average yield per acre (30 lb.)	555	625	
Growing costs:			
Land rent	$ 31.67	$ 35.58	
Seed	18.99	52.93	
Fertilizer	157.26	180.64	
Spray and dust	97.32	186.95	
Cultural labor	307.76	368.23	
Machine hire	20.45	24.31	
Gas, oil and grease	41.72	55.56	
Repair and maintenance	49.40	75.22	
Depreciation	54.36	48.47	
Licenses and insurance	38.08	56.14	
Interest on production capital (6% - 5 months)	20.33	28.23	
Interest on capital invested (other than land)	5.44	4.85	
Miscellaneous expense	50.72	93.40	
Total growing cost	893.50	1210.51	$1.937
Harvesting and marketing costs:			
Picking expense	232.41	299.74	.480
Grading and packing expense	385.43	562.76	.900
Containers	165.28	250.18	.400
Hauling	44.64	62.64	.100
Other	4.48	31.27	.050
Selling	60.15	78.54	.126
Total harvesting and marketing cost	892.39	1235.13	2.056
Total crop cost	1785.89	2495.64	3.993
Crop sales	2157.05	2656.54	4.250
Net return	$ 371.16	$ 160.90	$0.257

	1972-73 Range per acre From	To
Yield (30 lb.)	354	978
Total growing cost	$ 908.42	$1870.74
Total harvesting and marketing cost	711.55	1968.85
Total crop cost	1630.04	3264.02
Crop sales	1564.68	3834.71
Net return	$-368.76	$1071.80

Source: Grower records and estimates.

Watermelons
Costs and Returns per acre in the Immokalee-Lee Area
5-Season Average 1968-72 and 1972-73

Item	5-Season Average	1972-73	
Number of growers	9	5	
Number of acres	1449	653	
Average acres per grower	161	131	
Average yield per acre (Cwt.)	175	264	
Growing costs:	Average per Acre	Average per Acre	Cwt.
Land rent	$ 16.23	$ 19.94	
Seed	7.17	5.16	
Fertilizer	103.05	123.74	
Spray and dust	68.64	94.43	
Cultural labor	98.56	196.52	
Machine hire	26.19	60.85	
Gas, oil and grease	15.42	20.35	
Repair and maintenance	29.93	41.31	
Depreciation	26.57	27.35	
Licenses and insurance	7.92	22.25	
Interest on production capital (6% - 5 months)	9.66	15.24	
Interest on capital invested (other than land)	2.66	2.74	
Miscellaneous expense	13.10	25.08	
Total growing cost	425.10	654.96	$2.481
Harvesting and marketing costs:			
Cutting expense	38.40	77.55	.294
Grading and packing expense	33.12	64.84	.246
Containers	10.68	29.01	.110
Hauling	63.79	103.89	.393
Selling	44.33	60.98	.231
Total harvesting and marketing cost	190.32	336.27	1.274
Total crop cost	615.42	991.23	3.755
Crop sales	535.44	1086.56	4.116
Net return	$ -79.98	$ 95.33	$0.361

	1972-73 Range per acre From	To
Yield (Cwt.)	181	452
Total growing cost	$ 389.36	$ 887.99
Total harvesting and marketing cost	237.50	497.20
Total crop cost	626.86	1200.49
Crop sales	615.40	2147.00
Net return	$-412.86	$1002.23

Source: Grower records and estimates.

Food and Resource Econ. -- 1500

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D. L. Brooks

Economic Information
Report 22

Costs and Returns from Vegetable Crops in Florida, Season 1973-74 with Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville 32611

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ABSTRACT

Costs and returns for vegetable crops were obtained and summarized for 14 different vegetable crops in one or more of eight major producing areas for the 1972-73 season. Yields were rated to excellent for most crops and areas. Per unit costs of production were higher for many crops, reflecting increases in fuel, fertilizer, labor and packaging costs. Higher season average prices were reported in one-half of the 28 possible crop-area combinations in 1972-73 over a year earlier. Net returns per unit of product were higher in 18 of the possible crop-area combinations.

Key words: Economics, vegetables, annual costs, simple averages, purposive sample.

FOREWORD

This is the fourteenth in a new series of summaries of costs and returns from the principal vegetable crops by major producing areas in Florida. There is a need among growers, commodity groups, credit agencies, research workers and teachers for current factual information of this type.

Data in this summary were gathered by personal interview with growers of the various vegetable crops. Growers' records of actual production costs were used when available, and estimates taken when records were not kept. As complete a breakdown of costs as possible was obtained from each grower. Insofar as possible, growing and harvesting costs have been separated and labor items excluded from costs of materials. In a few cases, where crop sales were not available from growers, they were computed on the basis of average prices received for the crop as reported by the Florida Crop and Livestock Reporting Service, U.S.D.A., Orlando, Florida.

ACKNOWLEDGEMENTS

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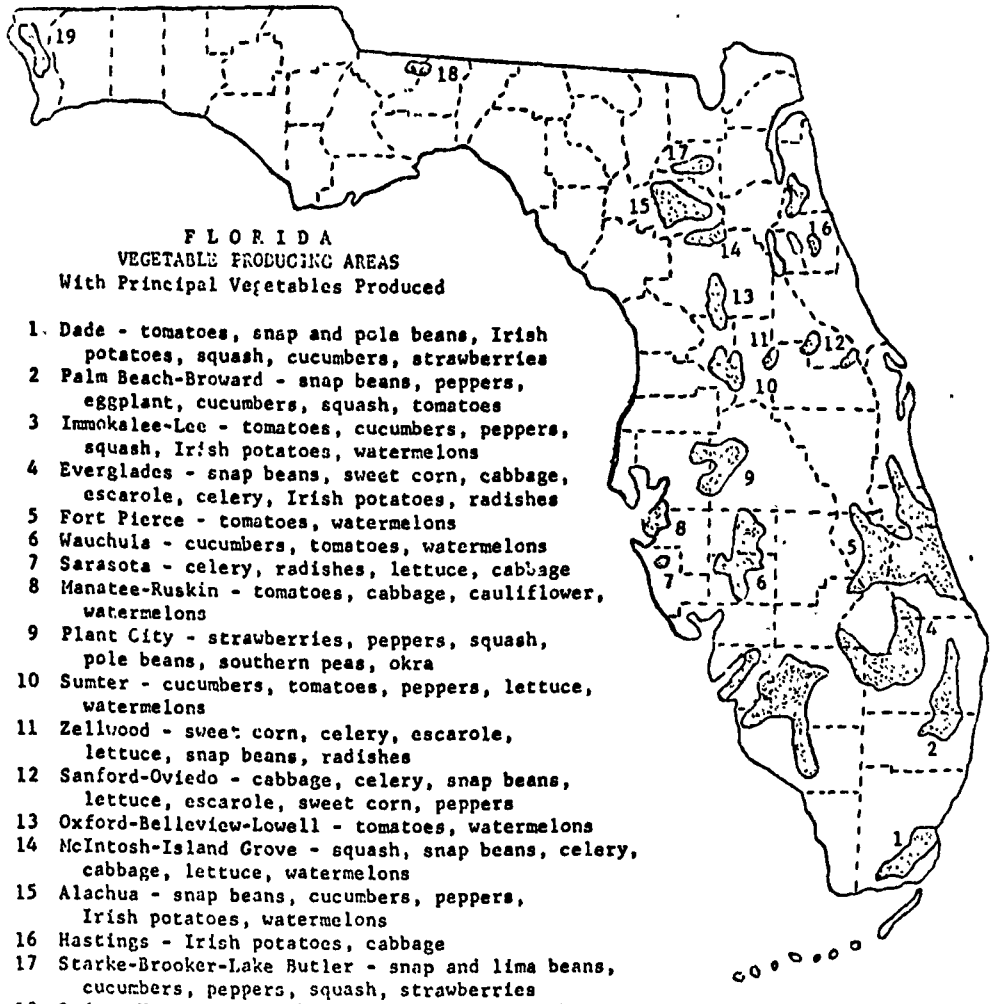


FLORIDA
VEGETABLE PRODUCING AREAS
With Principal Vegetables Produced

1. Dade - tomatoes, snap and pole beans, Irish potatoes, squash, cucumbers, strawberries
2 Palm Beach-Broward - snap beans, peppers, eggplant, cucumbers, squash, tomatoes
3 Immokalee-Lee - tomatoes, cucumbers, peppers, squash, Irish potatoes, watermelons
4 Everglades - snap beans, sweet corn, cabbage, escarole, celery, Irish potatoes, radishes
5 Fort Pierce - tomatoes, watermelons
6 Wauchula - cucumbers, tomatoes, watermelons
7 Sarasota - celery, radishes, lettuce, cabbage
8 Manatee-Ruskin - tomatoes, cabbage, cauliflower, watermelons
9 Plant City - strawberries, peppers, squash, pole beans, southern peas, okra
10 Sumter - cucumbers, tomatoes, peppers, lettuce, watermelons
11 Zellwood - sweet corn, celery, escarole, lettuce, snap beans, radishes
12 Sanford-Oviedo - cabbage, celery, snap beans, lettuce, escarole, sweet corn, peppers
13 Oxford-Belleview-Lowell - tomatoes, watermelons
14 McIntosh-Island Grove - squash, snap beans, celery, cabbage, lettuce, watermelons
15 Alachua - snap beans, cucumbers, peppers, Irish potatoes, watermelons
16 Hastings - Irish potatoes, cabbage
17 Starke-Brooker-Lake Butler - snap and lima beans, cucumbers, peppers, squash, strawberries
18 Quincy-Havana - pole beans, cucumbers, squash
19 Escambia - Irish potatoes

DEFINITIONS

Number of growers: Number of individual records or estimates of crop costs and returns included in each crop summary.

Number of acres: The total acreage planted by growers whose records or estimates were used. When a part of the planted acreage was lost soon after planting and replaced by another crop, the reduced acreage was used.

Average acres per grower: The number of acres of the particular crop divided by the number of growers.

Average yield per acre: The number of units per planted acre harvested.

Land rent: In the interests of uniformity, land rent was charged for all acreages and crops at the prevailing rate reported by growers in the area. This was done to avoid difficulties in the determination of a normal valuation, interest charge for use of land and capitalization of land values in a period of fluctuating values and prices. Taxes on farm real estate are excluded since rent is being charged.

Seed and seedbed includes the cost of seed or plants for planting the crop. If a seedbed was used, the figures, unless otherwise noted, include costs of labor and materials for growing plants as well as seed costs.

Fertilizer represents the actual cost of nutrient materials applied to produce the crop. Labor or machine costs of application are not included.

Spray and dust included only the cost of materials unless application labor is specified, in which case some machine costs may also be present. If weed control chemicals or soil fumigants were used, their cost also is included here.

Cultural labor contains the cost of man labor, whether hired or family, to produce the crop from ground preparation until ready for harvest. It does not include supervision by the operator, since his compensation is to a great extent dependent upon returns from the sale of the crop.

Machine hire is the cost of machine work hired, including use of airplanes when applicable, in producing the crop. This item includes labor charges for the machine operator and charges for the use of equipment.

Gas, oil and grease includes the cost of gas, oil and grease required to operate tractors, trucks, sprayers, pumps and other machinery in producing the crop. It may also include electrical power expenses for irrigation when utilized.

Repair and [illegible] represent the cost of repairs to equipment used in producing [illegible]. It also includes the small tools such as hoes, rakes and shovels purchased and charged off as a current expenditure.

Depreciation includes the annual charge for depreciation and obsolescence of equipment and labor housing. When actual depreciation charges could not be obtained from records, they were computed by assuming a 10-year average life-use on all equipment on the basis of replacement value as indicated by the operator.

Licenses and insurance represent the cost of licenses and insurance items which [illegible] to the farm business. Licenses include those for trucks and [illegible] on the farm. Insurance includes labor and crop insurance and fire & windstorm insurance on buildings and equipment. It excludes health or accident insurance for the operator or his family.

Interest on production capital was charged at the rate of 9 percent on all cash costs for the number of months required to grow and market the crop regardless of whether or not much production capital was actually borrowed. This percentage was used because it is a currently available borrowing rate.

Interest on capital invested (other than land) charged at 9 percent of the actual or estimated annual depreciated value of the capital invested in machinery and equipment. It was assumed that all equipment was presently worth one half its replacement value.

Miscellaneous includes such items as wire, stakes, twine, plastics, office supplies, administrative expense other than value of the operator's management, legal and audit fees, telephone and telegraph and incidental expenses.

Harvesting and marketing expense, where possible, has been divided into two items: (1) picking and (2) grading and packing. Picking, cutting, or digging expense includes actual cost of harvesting the crop and preparing it for movement to packinghouse or wash house. Washing or grading and packing expense includes preparation of the product for shipment either in the field or at an adjacent packinghouse. It includes machinery and overhead costs in addition to labor. The same is true for all crops in all areas where grading and packing is done off the farm in packinghouses.

Containers includes the cost for hampers, crates, bags or baskets in which the product is moved to market.

Hauling is the cost of movement of the product from field to packinghouse or loading point. It is often computed on a contract basis and includes labor and equipment items. In cases where hauling was performed by the operator's trucks, the costs have been separated from production labor and machine expense items as nearly as possible.

Other includes the cost of precooling the commodity prior to shipment and, for tomatoes, celery and sweet corn, the contribution to the Marketing Agreement Program. Inspection fees, when incurred, are included in packinghouse charges and are not reported as a separate item.

Selling is the packinghouse, market, sales organization or dealer's charge for performing the sales service for the crop when deducted from the producer's price. This cost does not include charges for unloading, grading, packing, etc.

Crop sales are the gross returns to the grower before deduction of growing, harvesting and marketing costs.

Net return is the return to the producer after deduction of all expenses in producing, harvesting and marketing the crop.

Proration of costs between crops: For such items as seed, fertilizer, spray and dust, airplane application and harvesting and marketing costs, growers' records or estimates for each crop were used to make the appropriate charges.

In the case of the cultural labor, however, no breakdown for the different crops produced on the individual farm could be obtained from the grower except in a very few cases when such records had been kept. The total cultural labor for all crops produced on each farm was, in most cases, prorated to the various crops on the basis of available data developed at the Florida Agricultural Experiment Stations with regard to man hours required in various parts of the state to produce different crops from land preparation to harvest. Except in a very few cases, a similar situation also applies to such items as machine hire, tractor fuel, oil and grease, repairs, depreciation and other production costs where records had not been kept showing the respective charges to different crops. Prorations were also made of these items on the basis of available data (D. L. Brooke, Fla. Agr. Exp. Sta. Bul. 660, June 1963).

In many cases individual growers did not incur every cost item. This applies especially to airplane application, machine hire, grading and packing, containers, hauling and precooling. Thus, these data are based only on the overall average for all growers contacted in each area. Footnotes have been used to set forth the number of growers and average costs for items not incurred by all growers in the sample.

Per-unit costs and returns were computed by dividing the average yield per acre in the sample into the various items of cost shown in the individual tables. They are merely averages of the data recorded and, in some cases, do not reflect the full cost of performing the service because all growers may not have incurred every item of cost.

Range per acre showing the lowest and the highest of the sampled observations for yields, costs and returns are included for each crop and area. This is intended to show growers and other interested parties the extremes that may be encountered in vegetable production.

Tomatoes
Costs and returns per acre in the Dade County area
5-season average 1969-73 and 1973-74

Item	5-season average	1973-74	
Number of growers	7	6	
Number of acres	8169	5300	
Average acres per grower	1167	883	
Average yield per acre (30 lbs.)	331	530	
Growing costs:		Average per Acre	30 lbs.
Land rent	$ 34.38	$ 39.62	
Seed	8.99	22.44	
Fertilizer	148.18	195.50	
Spray and dust	117.76	216.41	
Cultural labor	120.63	186.33	
Machine hire	20.77	19.06[a]	
Gas, oil and grease	20.49	35.30	
Repair and maintenance	38.96	68.35	
Depreciation	30.81	42.47	
Licenses and insurance	14.70	28.65	
Interest on production capital (9% - 5 months)	20.07	34.11	
Interest on capital invested (other than land)	4.62	6.37	
Miscellaneous expense	10.29	97.90	
Total growing cost	590.65	992.51	$ 1.873
Harvesting and marketing costs:			
Picking expense	173.24	340.62	.642
Grading and packing expense	181.00	402.30	.759
Containers	106.46	235.70	.445
Hauling	34.06	68.23	.129
Other	5.70	21.21	.040
Selling	37.46	73.80	.139
Total harvesting and marketing cost	537.92	1141.86	2.154
Total crop cost	1128.57	2134.37	4.027
Crop sales	1218.14	2611.51	4.927
Net return	$ 89.57	$ 477.14	$ 0.900

	1973-74 range per acre	
	From	To
Yield (30 lbs.)	211	751
Total growing cost	$ 630.59	$1310.40
Total harvesting and marketing cost	456.82	1609.26
Total crop cost	1268.47	2919.66
Crop sales	1295.29	4464.29
Net return	$ -44.28	$1881.18

[a]Reported by 5 growers averaging $22.88 per acre.

Source: Grower records and estimates.

Tomatoes
Costs and returns per acre in the Ft. Pierce area
5-season average 1969-73 and 1973-74

Item	5-season average	1973-74	
Number of growers	15	15	
Number of acres	3990	2495	
Average acres per grower	266	166	
Average yield per acre (30 lbs.)	299	384	
Growing costs:	Acre	Average per Acre	30 lbs.
Land rent	$ 16.12	$ 22.52	
Seed	13.01	14.34	
Fertilizer	116.65	116.41	
Spray and dust	96.32	126.33	
Cultural labor	166.31	127.14	
Machine hire	98.61	90.53	
Gas, oil and grease	31.37	42.95	
Repair and maintenance	55.01	50.64	
Depreciation	26.07	35.10	
Licenses and insurance	10.19	13.85	
Interest on production capital (9% - 5 months)	23.19	24.26	
Interest on capital invested (other than land)	3.91	5.26	
Miscellaneous expense	14.95	42.25	
Total growing cost	671.71	711.58	$ 1.853
Harvesting and marketing costs:			
Picking expense	203.69	281.10	.732
Grading and packing expense	151.57	285.92	.745
Containers	92.98	169.41	.441
Hauling	40.11	68.45	.178
Other	5.55	15.38	.040
Selling	40.16	55.56	.145
Total harvesting and marketing cost	534.06	875.82	2.281
Total crop cost	1205.77	1587.40	4.134
Crop sales	1187.85	1640.45	4.272
Net return	$ -17.92	$ 53.05	$ 0.138

	1973-74 range per acre	
	From	To
Yield (30 lbs.)	184	659
Total growing cost	$ 508.39	$ 892.96
Total harvesting and marketing cost	446.29	1574.81
Total crop cost	993.38	2289.57
Crop sales	664.70	3554.85
Net return	$-538.47	$1392.96

Source: Grower records and estimates.

Staked Tomatoes
Costs and returns per acre in the East Coast area
5-season average 1969-73 and 1973-74

Item	5-season average	1973-74	
Number of growers	10	6	
Number of acres	2040	955	
Average acres per grower	204	159	
Average yield per acre (30 lbs.)	844	978	
Growing costs:		Average per Acre	30 lbs.
Land rent	$ 88.57	$ 56.98	
Seed	24.83	103.92	
Fertilizer	260.46	284.08	
Spray and dust	237.06	232.67	
Cultural labor	992.65	905.05	
Machine hire	136.85	176.35	
Gas, oil and grease	51.03	62.33	
Repair and maintenance	106.35	81.67	
Depreciation	68.69	83.56	
Licenses and insurance	38.80	32.55	
Interest on production capital (9% - 5 months)	77.26	85.76	
Interest on capital invested (other than land)	10.30	12.53	
Miscellaneous expense	123.60	351.49	
Total growing cost	2216.45	2468.94	$ 2.525
Harvesting and marketing costs:			
Picking expense	603.81	695.77	.711
Grading and packing expense	483.20	930.56	.951
Containers	297.40	531.02	.543
Hauling	110.29	185.34	.190
Other	15.13	39.22	.040
Selling	142.33	171.68	.176
Total harvesting and marketing cost	1652.16	2553.59	2.611
Total crop cost	3868.61	5022.53	5.136
Crop sales	3999.18	4241.57	4.337
Net return	$ 130.57	$-780.96	$-0.799

	1973-74 range per acre From	To
Yield (30 lbs.)	409	2000
Total growing cost	$1980.78	$2864.67
Total harvesting and marketing cost	945.70	5630.00
Total crop cost	3402.87	7610.78
Crop sales	1432.92	9000.00
Net return	$-2377.45	$1389.22

Source: Grower records and estimates.

Staked Tomatoes
Costs and returns per acre in the Immokalee-Lee area
5-season average 1969-73 and 1973-74

Item	5-season average	1973-74	
Number of growers	7	12	
Number of acres	1533	2730	
Average acres per grower	219	228	
Average yield per acre (30 lbs.)	715	955	
Growing costs:		Average per Acre	30 lbs.
Land rent	$ 35.46	$ 41.96	
Seed	40.63	84.50	
Fertilizer	207.62	181.65	
Spray and dust	236.28	333.37	
Cultural labor	596.69	708.99	
Machine hire	92.89	78.72	
Gas, oil and grease	51.26	82.54	
Repair and maintenance	100.05	124.32	
Depreciation	77.20	92.98	
Licenses and insurance	46.03	49.72	
Interest on production capital (9% - 5 months)	58.15	71.48	
Interest on capital invested (other than land)	11.58	13.95	
Miscellaneous expense	143.83	220.39	
Total growing cost	1697.67	2084.57	$ 2.183
Harvesting and marketing costs:			
Picking expense	566.31	610.82	.640
Grading and packing expense	510.46	800.16	.838
Containers	255.06	387.76	.406
Hauling	93.16	129.33	.135
Other	15.12	38.20	.040
Selling	102.73	134.95	.141
Total harvesting and marketing cost	1542.84	2101.22	2.200
Total crop cost	3240.51	4185.79	4.383
Crop sales	3360.44	4869.31	5.099
Net return	$ 119.93	$ 683.52	$ 0.716

	1973-74 range per acre	
	From	To
Yield (30 lbs.)	500	1400
Total growing cost	$1168.31	$2945.35
Total harvesting and marketing cost	1037.50	3080.00
Total crop cost	2251.41	5836.04
Crop sales	2018.75	7490.00
Net return	$-232.66	$1918.84

Source: Grower records and estimates.

Staked Tomatoes

Costs and returns per acre in the Manatee-Ruskin area
5-season average 1969-73 and 1973-74

Item	5-season average	1973-74	
Number of growers	11	12	
Number of acres	2086	2319	
Average acres per grower	188	193	
Average yield per acre (30 lbs.)	551	782	
Growing costs:		Average per Acre	
	Acre		30 lbs.
Land rent	$ 31.97	$ 45.02	
Seed	27.81	58.71	
Fertilizer	163.57	175.40	
Spray and dust	119.21	155.01	
Cultural labor	321.84	380.32	
Machine hire	20.49	21.47	
Gas, oil and grease	45.40	78.47	
Repair and maintenance	55.76	84.40	
Depreciation	52.21	76.72	
Licenses and insurance	44.40	57.53	
Interest on production capital (9% - 5 months)	33.43	45.08	
Interest on capital invested (other than land)	7.83	11.51	
Miscellaneous expense	60.93	145.68	
Total growing cost	984.85	1335.32	$ 1.708
Harvesting and marketing costs:			
Picking expense	249.88	337.00	.431
Grading and packing expense	420.34	712.36	.911
Containers	181.35	345.65	.442
Hauling	49.28	104.63	.134
Other	10.74	31.28	.040
Selling	66.15	94.35	.120
Total harvesting and marketing cost	977.74	1625.27	2.078
Total crop cost	1962.59	2960.59	3.786
Corp sales	2355.85	4385.50	5.608
Net return	$ 393.26	$1424.91	$ 1.822

	1973-74 range per acre	
	From	To
Yield (30 lbs.)	376	1178
Total growing cost	$ 959.38	$1891.96
Total harvesting and marketing cost	950.64	2447.48
Total crop cost	2241.77	4339.44
Crop sales	2210.91	6549.83
Net return	$ -30.86	$2340.29

Source: Grower records and estimates.

D. L. Brooke

Economic Information
Report 49

Costs and Returns from Vegetable Crops in Florida, Season 1974-75 with Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville 32611

March 1976

ABSTRACT

Costs and returns were obtained and summarized for 14 different vegetable crops in one or more of eight major producing areas for the 1974-75 season. Per acre costs of production increased by a larger amount in 1974-75 over the previous season than for any two consecutive seasons of record since 1945. Part of the increase was due to higher prices for materials fuels and labor, while some must be attributed to rapid changes in technology. Nearly all crops studied reported higher yields per acre which held increases in unit costs to a relatively lower level than per acre costs.

Key words: Economics, vegetables, annual costs, simple averages, purposive sample.

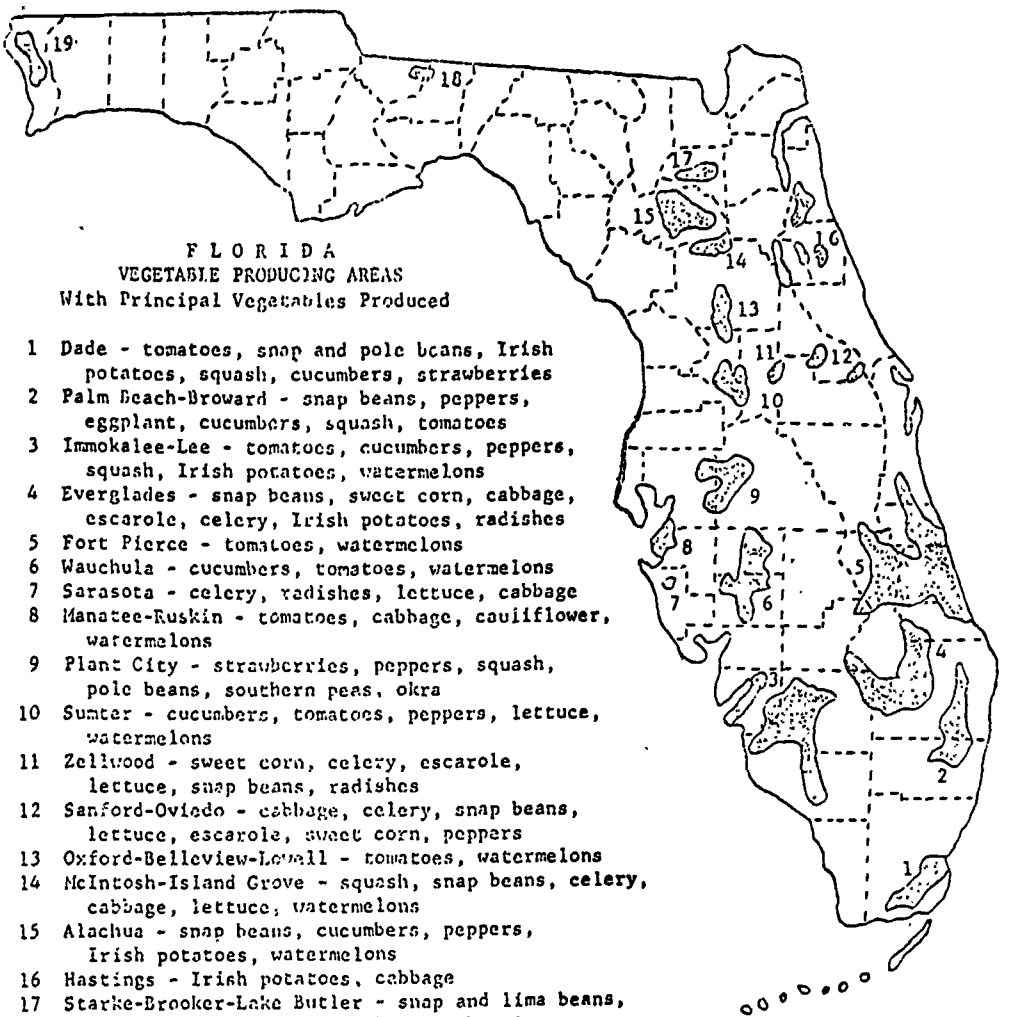
FOREWORD

This is the fifteenth in this series of summaries of costs and returns from the principal vegetable crops by major producing areas in Florida. There is a need among growers, commodity groups, credit agencies, research workers and teachers for current factual information of this type.

Data in this summary were gathered by personal interview with growers of the various vegetable crops. Growers' records of actual production costs were used when available, and estimates taken when records were not kept. As complete a breakdown of costs as possible was obtained from each grower. Insofar as possible, growing and harvesting costs have been separated and labor items excluded from costs of materials. In a few cases, where crop sales were not available from growers, they were computed on the basis of average prices received for the crop as reported by the Florida Crop and Livestock Reporting Service, Orlando, Florida.

ACKNOWLEDGMENTS

The writer wishes to express his appreciation to the vegetable growers for their excellent cooperation and also to the Florida Fruit and Vegetable Association, the Florida Crop and Livestock Reporting Service, Orlando, Florida, and to various county agents for much worthwhile assistance.



FLORIDA
VEGETABLE PRODUCING AREAS
With Principal Vegetables Produced

1 Dade - tomatoes, snap and pole beans, Irish potatoes, squash, cucumbers, strawberries
2 Palm Beach-Broward - snap beans, peppers, eggplant, cucumbers, squash, tomatoes
3 Immokalee-Lee - tomatoes, cucumbers, peppers, squash, Irish potatoes, watermelons
4 Everglades - snap beans, sweet corn, cabbage, escarole, celery, Irish potatoes, radishes
5 Fort Pierce - tomatoes, watermelons
6 Wauchula - cucumbers, tomatoes, watermelons
7 Sarasota - celery, radishes, lettuce, cabbage
8 Manatee-Ruskin - tomatoes, cabbage, cauliflower, watermelons
9 Plant City - strawberries, peppers, squash, pole beans, southern peas, okra
10 Sumter - cucumbers, tomatoes, peppers, lettuce, watermelons
11 Zellwood - sweet corn, celery, escarole, lettuce, snap beans, radishes
12 Sanford-Oviedo - cabbage, celery, snap beans, lettuce, escarole, sweet corn, peppers
13 Oxford-Belleview-Lowell - tomatoes, watermelons
14 McIntosh-Island Grove - squash, snap beans, celery, cabbage, lettuce, watermelons
15 Alachua - snap beans, cucumbers, peppers, Irish potatoes, watermelons
16 Hastings - Irish potatoes, cabbage
17 Starke-Brooker-Lake Butler - snap and lima beans, cucumbers, peppers, squash, strawberries
18 Quincy-Havana - pole beans, cucumbers, squash
19 Escambia - Irish potatoes

DEFINITIONS

Number of growers: Number of individual records or estimates of crop costs and returns included in each crop summary.

Number of acres: The total acreage planted by growers whose records or estimates were used. When a part of the planted acreage was lost soon after planting and replaced by another crop, the reduced acreage was used.

Average acres per grower: The number of acres of the particular crop divided by the number of growers.

Average yield per acre: The number of units per planted acre harvested.

Land rent: In the interests of uniformity, land rent was charged for all acreages and crops at the prevailing rate reported by growers in the area. This was done to avoid difficulties in the determination of a normal valuation, interest charge for use of land and capitalization of land values in a period of fluctuating values and prices. Taxes on farm real estate are excluded since rent is being charged.

Seed and seedbed includes the cost of seed or plants for planting the crop. If a seedbed was used, the figures, unless otherwise noted, include costs of labor and materials for growing plants as well as seed costs.

Fertilizer represents the actual cost of nutrient materials applied to produce the crop. Labor or machine costs of application are not included.

Spray and dust included only the cost of materials unless application labor is specified, in which case some machine costs may also be present. If weed control chemicals or soil fumigants were used, their cost also is included here.

Cultural labor contains the cost of man labor, whether hired or family, to produce the crop from ground preparation until ready for harvest. It does not include supervision by the operator, since his compensation is to a great extent dependent upon returns from the sale of the crop.

Machine hire is the cost of machine work hired, including use of airplanes when applicable, in producing the crop. This item includes labor charges for the machine operator and charges for the use of equipment.

Gas, oil and grease include the cost of gas, oil and grease required to operate tractors, trucks, sprayers, pumps and other machinery in producing the crop. It may also include electrical power expenses for irrigation when utilized.

Repair and maintenance represent the cost of repairs to equipment used in producing the crop. It also includes the small tools such as hoes, rakes and shovels purchased and charged off as a current expenditure.

Depreciation includes the annual charge for depreciation and obsolescence of equipment and labor housing. When actual depreciation charges could not be obtained from records, they were computed by assuming a 10-year average life-use on all equipment on the basis of replacement value as indicated by the operator.

Licenses and insurance represent the cost of licenses and insurance items when chargeable to the farm business. Licenses include those for trucks and autos used on the farm. Insurance includes labor and crop insurance and fire or windstorm insurance on buildings and equipment. It excludes health or accident insurance for the operator or his family.

Interest on production capital was charged at the rate of 9 percent on all cash costs for the number of months required to grow and market the crop regardless of whether or not much production capital was actually borrowed. This percentage was used because it is a currently available borrowing rate.

Interest on capital invested (other than land) was charged at 9 percent of the actual or estimated annual depreciated value of the capital invested in machinery and equipment. It was assumed that all equipment was presently worth one half its replacement value.

Miscellaneous includes such items as wire, stakes, twine, plastic, office supplies, administrative expense other than value of the operator's management, legal and audit fees, telephone and telegraph and incidental expenses.

Harvesting and marketing expense, where possible, has been divided into two items: (1) picking and (2) grading and packing. Picking, cutting, or digging expense includes actual cost of harvesting the crop and preparing it for movement to packinghouse or wash house. Washing or grading and packing expense includes preparation of the product for shipment either in the field or at an adjacent packinghouse. It includes machinery and overhead costs in addition to labor. The same is true for all crops in all areas where grading and packing is done off the farm in packinghouses.

Containers include the cost of hampers, crates, bags or baskets in which the product is moved to market.

Hauling is the cost of movement of the product from field to packinghouse or loading point. It is often computed on a contract basis and includes labor and equipment items. In cases where hauling was preformed by the operator's trucks, the costs have been separated from production labor and machine expense items as nearly as possible.

Other includes the cost of precooling the commodity prior to shipment and, for celery and sweet corn, the contribution to the Marketing Agreement Program. Inspection fees, when incurred, are included in packinghouse charges and are not reported as a separate item.

Selling is the packinghouse, market, sales organization or dealer's charge for performing the sales service for the crop when deducted from the producer's price. The cost does not include charges for unloading, grading, packing, etc.

Crop sales are the gross returns to the grower before deduction of growing, harvesting and marketing costs.

Net return is the return to the producer after deduction of all expenses, in producing, harvesting and marketing the crop.

Proration of costs between crops: For such items as seed, fertilizer, spray and dust, airplane application and harvesting and marketing costs, growers' records or estimates for each crop were used to make the appropriate charges.

In the case of the cultural labor, however, no breakdown for the different crops produced on the individual farm could be obtained from the grower except in a very few cases when such records had been kept. The total cultural labor for all crops produced on each farm was, in most cases, prorated to the various crops on the basis of available data developed at the Florida Agricultural Experiment Stations with regard to man hours required in various parts of the state to produce different crops from land preparation to harvest. Except in a very few cases, a similar situation also applies to such items as machine hire, tractor fuel, oil and grease, repairs, depreciation and other production costs where records had not been kept showing the respective charges to different crops. Prorations were also made to these items on the basis of available data (D. L. Brooke, Fla. Agr. Exp. Sta. Bul. 660, June 1963).

In many cases individual growers did not incur every cost item. This applies especially to airplane application, machine hire, grading and packing, containers, hauling and precooling. Thus, these data are based only on the overall average for all growers contacted in each area. Footnotes have been used to set forth the number of growers and average costs for items not incurred by all growers in the sample.

Per-unit costs and returns were computed by dividing the average yield per acre in the sample into the various items of cost shown in the individual tables. They are merely averages of the data recorded and, in some cases, do not reflect the full cost of performing the service because all growers may not have incurred every item of cost.

Ranges per acre showing the lowest and the highest of the sampled observations for yields, costs and returns are included for each crop and area. This is intended to show growers and other interested parties the extremes that may be encounted in vegetable production.

Table 23.--TOMATOES: Costs and returns in the Dade County area 5-season average 1970-74 and 1974-75

Item	5-season average	1974-75	
Number of growers	7	5	
Number of acres	7112	2820	
Average acres per grower	1016	564	
Average yield per acre (30 lb.)	378	822	
Growing costs:	Acre	Average per Acre	30 lb.
Land rent	$ 36.82	$ 34.05	
Seed	12.26	39.80	
Fertilizer	158.52	286.60	
Spray and dust	143.84	367.74	
Cultural labor	138.69	201.51	
Machine hire	21.94	13.35	
Gas, oil and grease	24.06	38.33	
Repair and maintenance	46.36	48.01	
Depreciation	35.57	50.76	
Licenses and insurance	18.69	38.47	
Interest on production capital (9% - 5 months)	23.61	45.61	
Interest on capital invested (other than land)	5.34	7.61	
Miscellaneous expense	28.40	148.48	
Total growing cost	694.10	1320.32	$ 1.606
Harvesting and marketing costs:			
Picking expense	212.12	457.06	.556
Grading and packing expense	246.48	728.75	.886
Containers	136.23	435.55	.530
Hauling	41.12	78.12	.095
Selling	45.60	119.04	.145
Total harvesting and marketing cost	681.55	1818.52	2.212
Total crop cost	1375.65	3138.84	3.818
Crop sales	1561.48	3742.92	4.553
Net return	$185.83	$604.08	$ 0.735

	1974-75 range per acre From	To
Yield (30 lbs.)	423	980
Total growing cost	$909.20	$1575.40
Total harvesting and marketing cost	936.50	2172.00
Total crop cost	1950.93	3735.84
Crop sales	2157.30	4876.80
Net return	$ 206.37	$1140.96

Table 24.--TOMATOES: Costs and returns in the Ft. Pierce area
5 season average 1970-74 and 1974-75

Item	5-season average	1974-75	
Number of growers	15	10	
Number of acres	3660	2395	
Average acres per grower	244	240	
Average yield per acre (30 lbs.)	305	425	
Growing costs:	Acre	Average per Acre	30 lb.
Land rent	$ 17.41	$ 22.88	
Seed	14.56	20.94	
Fertilizer	116.57	193.24	
Spray and dust	108.11	100.60	
Cultural labor	164.84	173.36	
Machine hire	95.49	104.11	
Gas, oil and grease	34.89	57.66	
Repair and maintenance	57.26	62.62	
Depreciation	29.70	40.10	
Licenses and insurance	11.48	21.44	
Interest on production capital (9% - 5 months)	24.06	29.55	
Interest on capital invested (other than land)	4.46	6.01	
Miscellaneous expense	21.01	31.15	
Total growing cost	699.84	863.66	$ 2.032
Harvesting and marketing costs:			
Picking expense	218.06	287.19	.676
Grading and packing expense	185.75	408.57	.961
Containers	106.37	205.48	.484
Hauling	45.95	76.97	.181
Selling	43.39	61.97	.146
Total harvesting and marketing cost	599.52	1040.18	2.448
Total crop cost	1299.36	1903.84	4.480
Crops sales	1231.53	1965.31	4.624
Net return	-67.83	61.47	0.144

	1974-75 range per acre From	To
Yield (30 lb.)	339	541
Total growing cost	$ 680.10	983.70
Total harvesting and marketing cost	866.38	1325.45
Total crop cost	1672.84	2131.66
Crop sales	1484.74	2683.18
Net return	$-220.00	$ 551.52

Table 25.--STAKED TOMATOES: Costs and returns in the Immokalee-Lee area 5-season average 1970-74 and 1974-75

Item	5-season average	1974-75	
Number of growers	9	17	
Number of acres	1971	3526	
Average acres per grower	219	207	
Average yield per acre (30 lb.)	745	1029	
Growing costs:	Acre	Average per Acre	30 lb.
Land rent	$ 35.33	$ 38.67	
Seed	55.22	86.96	
Fertilizer	195.09	321.02	
Spray and dust	267.22	371.25	
Cultural labor	583.42	665.22	
Machine hire	75.98	107.46	
Gas, oil and grease	57.22	101.53	
Repair and maintenance	103.99	119.68	
Depreciation	77.88	78.39	
Licenses and insurance	48.30	69.55	
Interest on production capital (9% - 5 months)	59.04	79.16	
Interest on capital invested (other than land)	11.68	11.76	
Miscellaneous expense	152.70	229.46	
Total growing cost	1723.07	2280.11	$2.216
Harvesting and marketing costs:			
Picking expense	576.09	533.98	.519
Grading and packing expense	590.25	997.96	.970
Containers	271.29	499.68	.485
Hauling	96.52	148.79	.145
Selling	103.95	142.08	.138
Total harvesting and marketing cost	1638.10	2322.49	2.257
Total crop cost	3361.17	4602.60	4.473
Crop sales	3668.76	5197.31	5.051
Net return	307.59	594.71	$ 0.578

	1974-75 range per acre	
	From	To
Yield	500	1750
Total growing cost	$1090.17	$3296.70
Total harvesting and marketing cost	1125.00	3789.81
Total crop cost	2513.40	7086.51
Crop sales	2500.00	8080.00
Net return	$-286.35	$1600.49

Table 26.--STAKED TOMATOES: Costs and returns in the Manatee-Ruskin area 5 season average 1970-74 and 1974-75

Item	5-season average	1974-75	
Number of growers	11	13	
Number of acres	2145	1814	
Average acres per grower	195	140	
Average yield per acre (30 lb.)	590	781	
Growing costs:	Acre	Average per Acre	30 lb.
Land rent	$ 34.75	$ 47.74	
Seed	37.56	77.76	
Fertilizer	167.77	293.26	
Spray and dust	133.07	250.76	
Cultural labor	339.89	493.44	
Machine hire	20.16	19.17[a]	
Gas, oil and grease	53.29	86.63	
Repair and maintenance	65.76	80.92	
Depreciation	55.08	88.56	
Licenses and insurance	49.81	73.12	
Interest on production capital (9% - 5 months)	36.79	59.79	
Interest on capital invested (other than land)	8.26	13.29	
Miscellaneous expense	79.15	171.53	
Total growing cost	1081.34	1755.97	$ 2.248
Harvesting and marketing costs:			
Picking expense	274.51	348.66	.447
Grading and packing expense	507.74	814.21	1.043
Containers	217.68	408.63	.523
Hauling	62.09	111.83	.143
Selling	74.85	88.26	.113
Total harvesting and marketing cost	1136.87	1771.59	2.269
Total crop cost	2218.21	3527.56	4.517
Crop sales	2808.27	4217.07	5.400
Net return	590.06	689.51	$ 0.883

	1974-75 range per acre From	To
Yield (30 lb.)	393	1376
Total growing cost	$1142.25	$2914.41
Total harvesting and marketing cost	910.52	3264.07
Total crop cost	2052.77	5754.34
Crop sales	1967.18	8166.36
Net return	$-188.59	$2412.02

D. L. Brooke

Economic Information
Report 67

Costs and Returns from Vegetable Crops in Florida, Season 1975-76 with Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville 32611

March 1977

ABSTRACT

Costs and returns were obtained for 14 different vegetable crops in one or more of eight major producing areas for the 1975-76 season. Some levelling of costs noted for 1975-76 as compared to the previous two years. Fertilizer and spray and dust costs were stable to slightly lower in many cases. Labor and seed costs were up only moderately. Fuel and repair costs showed continued increasing tendencies. Shipping container costs were relatively stable as compared to a year earlier.

Key words: Economics, vegetables, annual costs, simple averages, purposive sample.

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FOREWORD

This is the sixteenth in this series of summaries of costs and returns from the principal vegetable crops by major producing areas in Florida. There is a need among growers, commodity groups, credit agencies, research workers and teachers for current factual information of this type.

Data in this summary were gathered by personal interview with growers of the various vegetable crops. Growers' records of actual production costs were used when available, and estimates taken when records were not kept. As complete a breakdown of costs as possible was obtained from each grower. Insofar as possible, growing and harvesting costs have been separated and labor items excluded from costs of materials. In a few cases, where crop sales were not available from growers, they were computed on the basis of average prices received for the crop as reported by the Florida Crop and Livestock Reporting Service, Orlando, Florida.

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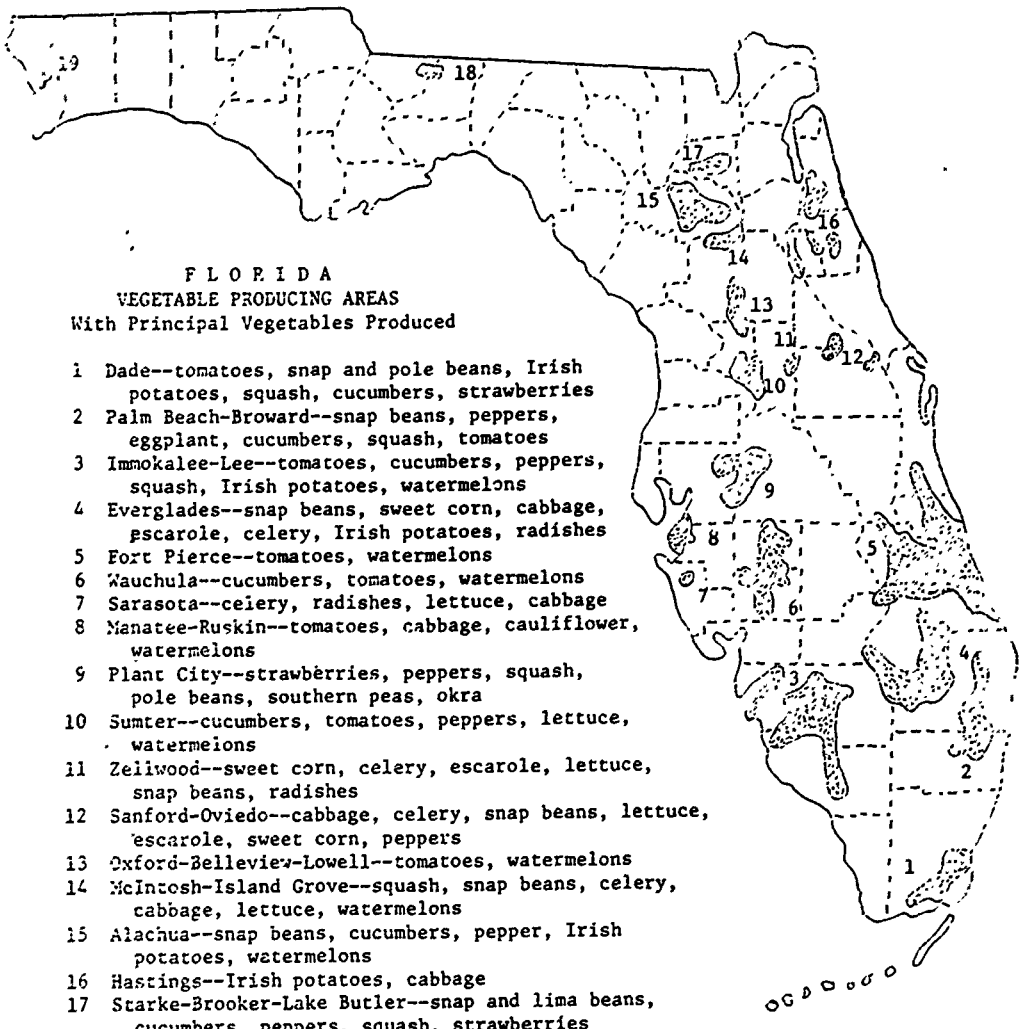

F L O R I D A
VEGETABLE PRODUCING AREAS
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DEFINITIONS

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Interest on production capital was charged at the rate of 9 percent on all cash costs for the number of months required to grow and market the crop regardless of whether or not much production capital was actually borrowed. This percentage was used because it is a currently available borrowing rate.

Interest on capital invested (other than land) was charged at 6 percent of the actual or estimated annual depreciated value of the capital invested in machinery and equipment. It was assumed that all equipment was presently worth one half its replacement value.

Miscellaneous includes such items as wire, stakes, twine, plastic, office supplies, administrative expense other than value of the operator's management, legal and audit fees, telephone and telegraph and incidental expenses.

Harvesting and marketing expense, where possible, has been divided into two items: (1) picking and (2) grading and packing. Picking, cutting, or digging expense includes actual cost of harvesting the crop and preparing it for movement to packinghouse or wash house. Washing or grading and packing expense includes preparation of the product for shipment either in the field or at an adjacent packinghouse. It includes machinery and overhead costs in addition to labor. The same is true for all crops in all areas where grading and packing is done off the farm in packinghouses.

Containers include the cost of hampers, crates, bags or baskets in which the product is moved to market.

Hauling is the cost of movement of the product from field to packinghouse or loading point. It is often computed on a contract basis and includes labor and equipment items. In cases where hauling was preformed by the operator's trucks, the costs have been separated from production labor and machine expense items as nearly as possible.

Other includes the cost of precooling the commodity prior to shipment and, for celery and sweet corn, the contribution to the Marketing Agreement Program. Inspection fees, when incurred, are included in packinghouse charges and are not reported as a separate item.

Selling is the packinghouse, market, sales organization or dealer's charge for performing the sales service for the crop when deducted from the producer's price. The cost does not include charges for unloading, grading, packing, etc.

Crop sales are the gross returns to the grower before deduction of growing, harvesting and marketing costs.

Net return is the return to the producer after deduction of all expenses, in producing, harvesting and marketing the crop.

Proration of costs between crops: For such items as seed, fertilizer, spray and dust, airplane application and harvesting and marketing costs, growers' records or estimates for each crop were used to make the appropriate charges.

In the case of the cultural labor, however, no breakdown for the different crops produced on the individual farm could be obtained from the grower except in a very few cases when such records had been kept. The total cultural labor for all crops produced on each farm was, in most cases, prorated to the various crops on the basis of available data developed at the Florida Agricultural Experiment Stations with regard to man hours required in various parts of the state to produce different crops from land preparation to harvest. Except in a very few cases, a similar situation also applies to such items as machine hire, tractor fuel, oil and grease, repairs, depreciation and other production costs where records had not been kept showing the respective charges to different crops. Prorations were also made to these items on the basis of available data (D. L. Brooke, Fla. Agr. Exp. Sta. Bul. 660, June 1963).

In many cases individual growers did not incur every cost item. This applies especially to airplane application, machine hire, grading and packing, containers, hauling and precooling. Thus, these data are based only on the overall average for all growers contacted in each area. Footnotes have been used to set forth the number of growers and average costs for items not incurred by all growers in the sample.

Per-unit costs and returns were computed by dividing the average yield per acre in the sample into the various items of cost shown in the individual tables. They are merely averages of the data recorded and, in some cases, do not reflect the full cost of performing the service because all growers may not have incurred every item of cost.

Ranges per acre showing the lowest and the highest of the sampled observations for yields, costs and returns are included for each crop and area. This is intended to show growers and other interested parties the extremes that may be encounted in vegetable production.

Table 23.--TOMATOES: Costs and returns in the Dade County area 5-season average 1971-75 and 1975-76

Item	5-season average	1975-76	
Number of growers	6	8	
Number of acres	5622	5232	
Average acres per grower	937	654	
Average yield per acre (30 lb.)	478	543	
Growing costs:		Average per Acre	30 lbs.
Land rent	$ 35.59	$ 38.49	
Seed	18.75	25.62	
Fertilizer	185.76	301.76	
Spray and dust	195.83	283.06	
Cultural labor	153.28	296.20	
Machine hire	20.99	30.65	
Gas, oil and grease	27.61	42.09	
Repair and maintenance	48.11	84.92	
Depreciation	40.07	55.35	
Licenses and insurance	23.55	35.12	
Interest on production capital (9% - 5 months)	28.69	45.64	
Interest on capital invested (other than land)	6.01	8.30	
Miscellaneous expense	55.55	79.13	
Total growing cost	839.79	1326.33	$ 2.443
Harvesting and marketing costs:			
Picking expense	269.45	312.94	.576
Grading and packing expense	359.99	527.68	.972
Containers	203.97	297.88	.549
Hauling	50.80	56.97	.105
Selling	62.38	81.51	.150
Total harvesting and marketing cost	946.59	1276.98	2.352
Total crop cost	1786.38	2603.31	4.795
Crop sales	2067.39	2772.91	5.107
Net return	$ 281.01	$ 169.60	$ .312

	1975-76 range per acre From	To
Yield (30 lbs.)	438	778
Total growing cost	$ 879.02	$2527.36
Total harvesting and marketing cost	1038.06	1828.30
Total crop cost	1936.52	3742.36
Crop sales	1585.51	3920.00
Net return	$-781.10	$ 845.86

Table 24.--TOMATOES: Costs and returns in the Ft. Pierce area 5-season average 1971-75 and 1975-76

Item	5-season average	1975-76	
Number of growers	15	8	
Number of acres	3525	1968	
Average acres per grower	235	246	
Average yield per acre (30 lbs.)	345	318	
Growing costs:	Acre	Average per Acre	30 lb.
Land rent	$ 19.23	$ 22.35	
Seed	16.91	24.74	
Fertilizer	131.16	216.50	
Spray and dust	111.49	114.32	
Cultural labor	164.76	227.00	
Machine hire	97.09	130.44	
Gas, oil and grease	40.71	74.43	
Repair and maintenance	59.84	78.95	
Depreciation	31.75	52.19	
Licenses and insurance	14.02	30.96	
Interest on production capital (9% - 5 months)	25.50	35.02	
Interest on capital invested (other than land)	4.76	7.83	
Miscellaneous expense	24.98	31.05	
Total growing cost	742.20	1045.78	$ 3.289
Harvesting and marketing costs:			
Picking expense	244.04	254.14	.799
Grading and packing expense	245.27	293.23	.922
Containers	133.97	171.56	.539
Hauling	54.71	63.58	.200
Selling	50.72	44.68	.141
Total harvesting and marketing cost	728.71	827.19	2.601
Total crop cost	1470.91	1872.97	5.890
Crop sales	1448.76	1595.75	5.018
Net return	$-22.15	$-277.22	$ -.872

	1975-76 range per acre From	To
Yield (30 lb.)	132	554
Total growing cost	$ 689.33	$1362.83
Total harvesting and marketing cost	341.43	1415.12
Total crop cost	1080.33	2557.07
Crop sales	428.98	2691.56
Net return	$-885.09	$ 392.26

Table 25.--STAKED TOMATOES: Costs and returns in the Immokalee-Lee area 5-season average 1971-75 and 1975-76

Item	5-season average	1975-76	
Number of growers	12	13	
Number of acres	2508	4128	
Average acres per grower	209	318	
Average yield per acre (30 lb.)	882	883	
Growing costs:	Acre	Average per Acre	30 lb.
Land rent	$ 34.71	$ 35.89	
Seed	69.43	94.68	
Fertilizer	225.68	295.96	
Spray and dust	302.69	331.58	
Cultural labor	604.49	692.26	
Machine hire	78.89	91.68[a]	
Gas, oil and grease	71.29	91.00	
Repair and maintenance	106.17	142.11	
Depreciation	79.24	85.63	
Licenses and insurance	53.77	52.14	
Interest on production capital (9% - 5 months)	64.92	75.39	
Interest on capital invested (other than land)	11.89	12.84	
Miscellaneous expense	183.99	182.95	
Total growing cost	1887.16	2184.11	$ 2.474
Harvesting and marketing costs:			
Picking expense	639.30	461.43	.522
Grading and packing expense	733.80	769.55	.872
Containers	348.25	475.91	.539
Hauling	115.71	113.71	.129
Selling	118.51	130.18	.147
Total harvesting and marketing cost	1955.57	1950.78	2.209
Total crop cost	3842.73	4134.89	4.683
Crop sales	4421.07	4519.52	5.118
Net return	$578.34	$384.63	$ .435

	1975-76 range per acre From	To
Yield (30 lb.)	327	1700
Total growing cost	$1247.27	$3163.24
Total harvesting and marketing cost	810.70	3951.38
Total crop cost	2109.34	6679.92
Crop sales	1810.30	8195.24
Net return	-1058.43	$1517.79

[a]Reported by 11 growers averaging $108.35 per acre.

Table 26.--STAKED TOMATOES: Costs and returns in the Manatee-Ruskin area 5-season average 1971-75 and 1975-76

Item	5-season average	1975-76	
Number of growers	12	12	
Number of acres	2232	2298	
Average acres per grower	186	192	
Average yield per acre (30 lb.)	648	824	
		Average per	
	Acre	Acre	30 lb.
Land rent	$ 38.02	$ 53.90	
Seed	49.56	84.22	
Fertilizer	194.77	248.52	
Spray and dust	165.43	279.94	
Cultural labor	380.94	506.83	
Machine hire	20.53	24.29[a]	
Gas, oil and grease	62.46	71.51	
Repair and maintenance	73.85	96.44	
Depreciation	61.08	78.72	
Licenses and insurance	56.83	66.16	
Interest on production capital (9% - 5 months)	43.03	59.58	
Interest on capital invested (other than land)	9.16	11.81	
Miscellaneous expense	105.12	154.99	
Total growing cost	1260.78	1738.91	$ 2.110
Harvesting and marketing costs:			
Picking expense	301.48	369.35	.448
Grading and packing expense	607.62	852.05	1.034
Containers	270.60	447.45	.543
Hauling	77.51	110.78	.135
Selling	82.55	101.39	.123
Total harvesting and marketing cost	1339.76	1881.02	2.283
Total crop cost	2600.54	3619.93	4.393
Crop sales	3267.19	3682.22	4.469
Net return	$666.65	$ 62.29	$ .076

	1975-76 range per acre	
	From	To
Yield (30 lb.)	423	1160
Total growing cost	$1344.05	$2342.89
Total harvesting and marketing cost	1058.38	2592.60
Total crop cost	2188.19	4830.63
Crop sales	2624.35	5452.00
Net return	$-452.62	$1187.52

[a]Reported by eight growers averaging $36.44 per acre.

D. L. Brooke

Economic Information
Report 85

Costs and Returns from Vegetable Crops in Florida, Season 1976-77 with Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville 32611

March 1978

ABSTRACT

Costs and returns were obtained for 14 different vegetable crops in one or more of eight major producing areas for the 1976-77 season. Increased costs were the rule for most crops as compared to a year earlier. Energy and machine costs showed the largest increases. Labor and materials costs increased more moderately. Yields were lower on winter crops, a result of the freeze.

Key words: Economics, vegetables, annual costs, simple averages, purposive sample.

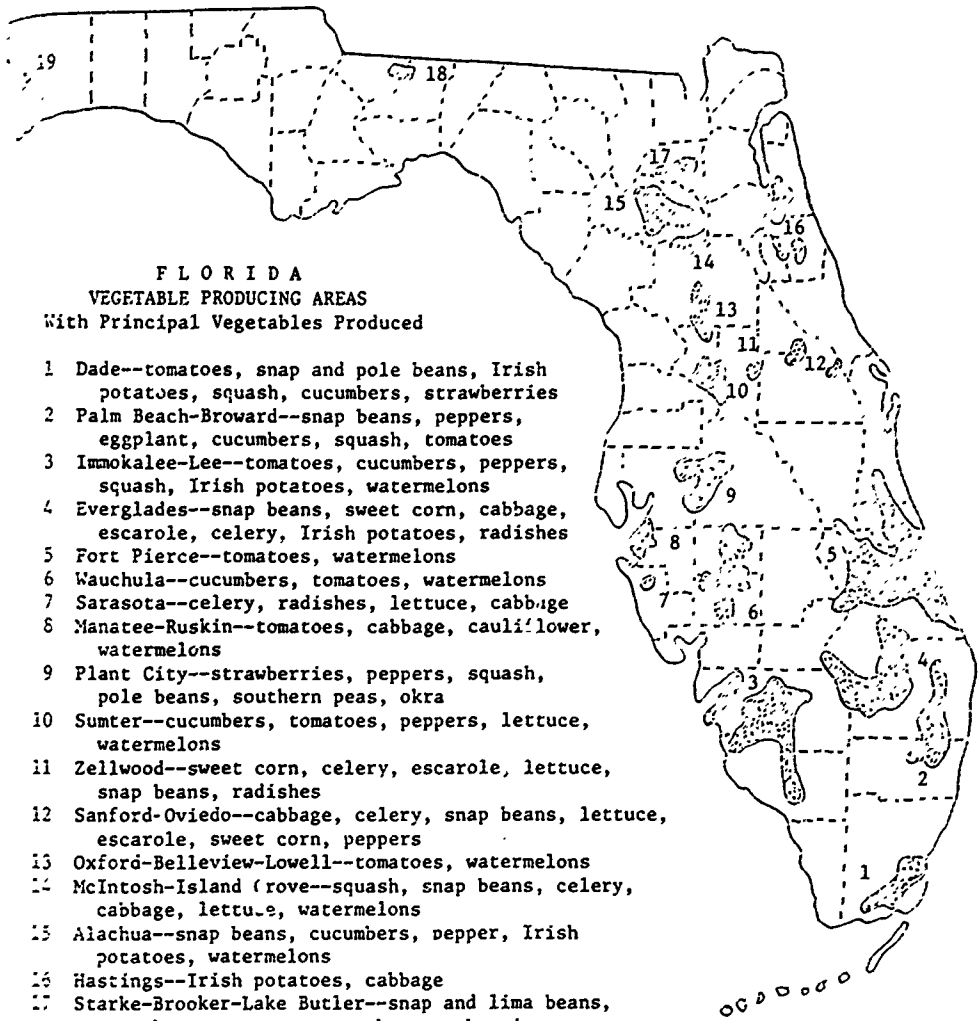
FOREWORD

This is the seventeenth in this series of summaries of costs and returns from the principal vegetable crops by major producing areas in Florida. There is a need among growers, commodity groups, credit agencies, research workers and teachers for current factual information of this type.

Data in this summary were gathered by personal interview with growers of the various vegetable crops. Growers' records of actual production costs were used when available, and estimates taken when records were not kept. As complete a breakdown of costs as possible was obtained from each grower. Insofar as possible, growing and harvesting costs have been separated and labor items excluded from costs of materials. In a few cases, where crop sales were not available from growers, they were computed on the basis of average prices received for the crop as reported by the Florida Crop and Livestock Reporting Service, Orlando, Florida.

ACKNOWLEDGMENTS

The writer wishes to express his appreciation to the vegetable growers for their excellent cooperation and also to the Florida Fruit and Vegetable Association, the Florida Crop and Livestock Reporting Service, Orlando, Florida, and to various county agents for much worthwhile assistance.



F L O R I D A
VEGETABLE PRODUCING AREAS
With Principal Vegetables Produced

1 Dade--tomatoes, snap and pole beans, Irish potatoes, squash, cucumbers, strawberries
2 Palm Beach-Broward--snap beans, peppers, eggplant, cucumbers, squash, tomatoes
3 Immokalee-Lee--tomatoes, cucumbers, peppers, squash, Irish potatoes, watermelons
4 Everglades--snap beans, sweet corn, cabbage, escarole, celery, Irish potatoes, radishes
5 Fort Pierce--tomatoes, watermelons
6 Wauchula--cucumbers, tomatoes, watermelons
7 Sarasota--celery, radishes, lettuce, cabbage
8 Manatee-Ruskin--tomatoes, cabbage, cauliflower, watermelons
9 Plant City--strawberries, peppers, squash, pole beans, southern peas, okra
10 Sumter--cucumbers, tomatoes, peppers, lettuce, watermelons
11 Zellwood--sweet corn, celery, escarole, lettuce, snap beans, radishes
12 Sanford-Oviedo--cabbage, celery, snap beans, lettuce, escarole, sweet corn, peppers
13 Oxford-Belleview-Lowell--tomatoes, watermelons
14 McIntosh-Island Grove--squash, snap beans, celery, cabbage, lettuce, watermelons
15 Alachua--snap beans, cucumbers, pepper, Irish potatoes, watermelons
16 Hastings--Irish potatoes, cabbage
17 Starke-Brooker-Lake Butler--snap and lima beans, cucumbers, peppers, squash, strawberries
18 Quincy-Havana--pole beans, cucumbers, squash, tomatoes
19 Escambia--Irish potatoes

DEFINITIONS

Number of growers: Number of individual records or estimates of crop costs and returns included in each crop summary.

Number of acres: The total acreage planted by growers whose records or estimates were used. When a part of the planted acreage was lost soon after planting and replaced by another crop, the reduced acreage was used.

Average acres per grower: The number of acres of the particular crop divided by the number of growers.

Average yield per acre: The number of units per planted acre harvested.

Land rent: In the interests of uniformity, land rent was charged for all acreages and crops at the prevailing rate reported by growers in the area. This was done to avoid difficulties in the determination of a normal valuation, interest charge for use of land and capitalization of land values in a period of fluctuating values and prices. Taxes on farm real estate are excluded since rent is being charged.

Seed and seedbed includes the cost of seed or plants for planting the crop. If a seedbed was used, the figures, unless otherwise noted, include costs of labor and materials for growing plants as well as seed costs.

Fertilizer represents the actual cost of nutrient materials applied to produce the crop. Labor or machine costs of application are not included.

Spray and dust included only the cost of materials unless application labor is specified, in which case some machine costs may also be present. If weed control chemicals or soil fumigants were used, their cost also is included here.

Cultural labor contains the value of man labor, whether hired or family, to produce the crop from ground preparation until ready for harvest. It does not include supervision by the operator, since his compensation is to a great extent dependent upon returns from the sale of the crop.

Machine hire is the cost of machine work hired, including use of airplanes when applicable, in producing the crop. This item includes labor charges for the machine operator and charges for the use of equipment.

Gas, oil and grease include the cost of gas, oil and grease required to operate tractors, trucks, sprayers, pumps and other machinery in producing the crop. It may also include electrical power expenses for irrigation when utilized.

Repair and maintenance represent the cost of repairs to equipment used in producing the crop. It also includes the small tools such as hoes, rakes and shovels purchased and charged off as a current expenditure.

Depreciation includes the annual charge for depreciation and obsolescence of equipment and labor housing. When actual depreciation charges could not be obtained from records, they were computed by assuming a 10-year average life-use on all equipment on the basis of replacement value as indicated by the operator.

Licenses and insurance represent the cost of licenses and insurance items when chargeable to the farm business. Licenses include those for trucks and autos used on the farm. Insurance includes labor and crop insurance and fire or windstorm insurance on buildings and equipment. It excludes health or accident insurance for the operator or his family.

Interest on production capital was charged at the rate of 9 percent on all cash costs for the number of months required to grow and market the crop regardless of whether or not much production capital was actually borrowed. This percentage was used because it is a currently available borrowing rate.

Interest on capital invested (other than land) was charged at 9 percent of the actual or estimated annual depreciated value of the capital invested in machinery and equipment. It was assumed that all equipment was presently worth one half its replacement value.

Miscellaneous includes such items as wire, stakes, twine, plastic, office supplies, administrative expense other than value of the operator's management, legal and audit fees, telephone and telegraph and incidental expenses.

Harvesting and marketing expense, where possible, has been divided into two items: (1) picking and (2) grading and packing. Picking, cutting, or digging expense includes actual cost of harvesting the crop and preparing it for movement to packinghouse or wash house. Washing or grading and packing expense includes preparation of the product for shipment either in the field or at an adjacent packinghouse. It includes machinery and overhead costs in addition to labor. The same is true for all crops in all areas where grading and packing is done off the farm in packinghouses.

Containers include the cost of hampers, crates, bags or baskets in which the product is moved to market.

Hauling is the cost of movement of the product from field to packinghouse or loading point. It is often computed on a contract basis and includes labor and equipment items. In cases where hauling was preformed by the operator's trucks, the costs have been separated from production labor and machine expense items as nearly as possible.

Other includes the cost of precooling the commodity prior to shipment and, for celery and sweet corn, the contribution to the Marketing Agreement Program. Inspection fees, when incurred, are included in packinghouse charges and are not reported as a separate item.

Selling is the packinghouse, market, sales organization or dealer's charge for performing the sales service for the crop when deducted from the producer's price. The cost does not include charges for unloading, grading, packing, etc.

Crop sales are the gross returns to the grower before deduction of growing, harvesting and marketing costs.

Net return is the return to the producer after deduction of all expenses, in producing, harvesting and marketing the crop.

Proration of costs between crops: For such items as seed, fertilizer, spray and dust, airplane application and harvesting and marketing costs, growers' records or estimates for each crop were used to make the appropriate charges.

In the case of the cultural labor, however, no breakdown for the different crops produced on the individual farm could be obtained from the grower except in a very few cases when such records had been kept. The total cultural labor for all crops produced on each farm was, in most cases, prorated to the various crops on the basis of available data developed at the Florida Agricultural Experiment Stations with regard to man hours required in various parts of the state to produce different crops from land preparation to harvest. Except in a very few cases, a similar situation also applies to such items as machine hire, tractor fuel, oil and grease, repairs, depreciation and other production costs where records had not been kept showing the respective charges to different crops. Prorations were also made to these items on the basis of available data (D. L. Brooke, Fla. Agr. Exp. Sta. Bul. 660, June 1963).

In many cases individual growers did not incur every cost item. This applies especially to airplane application, machine hire, grading and packing, containers, hauling and precooling. Thus, these data are based only on the overall average for all growers contacted in each area. Footnotes have been used to set forth the number of growers and average costs for items not incurred by all growers in the sample.

Per-unit costs and returns were computed by dividing the average yield per acre in the sample into the various items of cost shown in the individual tables. They are merely averages of the data recorded and, in some cases, do not reflect the full cost of performing the service because all growers may not have incurred every item of cost.

Ranges per acre showing the lowest and the highest of the sampled observations for yields, costs and returns are included for each crop and area. This is intended to show growers and other interested parties the extremes that may be encounted in vegetable production.

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Table 23.--TOMATOES: Costs and returns in the Dade County area 5-season average 1972-76 and 1976-77

Item	5-season average	1976-77	
Number of growers	7	6	
Number of acres	5810	3612	
Average acres per grower	830	602	
Average yield per acre (30 lb.)	507	204	
Growing costs:		Average per Acre	30 lb.
Land rent	$ 36.04	$ 56.11	
Seed	22.06	23.29	
Fertilizer	215.23	244.83	
Spray and dust	230.73	257.85	
Cultural labor	184.32	244.27	
Machine hire	21.79	19.97	
Gas, oil and grease	30.85	44.09	
Repair and maintenance	56.25	68.24	
Depreciation	43.48	42.45	
Licenses and insurance	27.77	50.04	
Interest on production capital (9% - 5 months)	33.52	39.97	
Interest on capital invested (other than land)	6.52	6.37	
Miscellaneous expense	68.95	57.18	
Total growing cost	977.51	1154.66	$ 5.660
Harvesting and marketing costs:			
Picking expense	292.15	127.71	.626
Grading and packing expense	415.51	188.07	.922
Containers	240.50	108.30	.531
Hauling	54.35	28.79	.141
Selling	70.85	29.00	.142
Total harvesting and marketing cost	1073.36	481.87	2.362
Total crop cost	2050.87	1636.53	8.022
Crop sales	2330.62	1179.12	5.780
Net return	$279.75	$-457.41	$-2.242

	1976-77 range per acre From	To
Yield (30 lb.)	61	393
Total growing cost	$ 869.70	$ 1415.19
Total harvesting and marketing cost	146.22	954.99
Total crop cost	1015.92	2154.39
Crop sales	436.15	2333.29
Net return	$ -894.97	$ 178.90

Table 24.--TOMATOES: Costs and returns in the Ft. Pierce area 5-season average 1972-76

Item	5-season average
Number of growers	13
Number of acres	2990
Average acres per grower	230
Average yield per acre (30 lbs.)	351
Growing costs:	Average per Acre
Land rent	$ 21.23
Seed	16.97
Fertilizer	152.52
Spray and dust	118.10
Cultural labor	179.59
Machine hire	103.24
Gas, oil and grease	49.50
Repair and maintenance	65.81
Depreciation	36.46
Licenses and insurance	17.97
Interest on production capital (9% - 5 months)	28.17
Interest on capital invested (other than land)	5.47
Miscellaneous expense	26.69
Total growing cost	821.72
Harvesting and marketing costs:	
Picking expense	254.27
Grading and packing expense	276.31
Containers	150.01
Hauling	58.31
Selling	53.04
Total harvesting and marketing cost	791.94
Total crop cost	1613.66
Crop sales	1534.85
Net return	$ -78.81

Table 25.--STAKED TOMATOES: Costs and returns in the Gadsden County area season 1977 (Spring)

Item	1977
Number of growers	8
Number of acres	150
Average acres per grower	19
Average yield per acre (30 lb.)	1347
Growing costs:	**Average per Acre**
Land rent	$ 43.44
Seed	129.42
Fertilizer	211.11
Spray and dust	457.03
Cultural labor	675.04
Machine hire	7.81[a]
Gas, oil and grease	131.46
Repair and maintenance	146.00
Depreciation	90.00
Licenses and insurance	157.71
Interest on production capital (9% - 5 months)	83.18
Interest on capital invested (other than land)	13.50
Miscellaneous expense	258.94
Total growing cost	2404.64
Harvesting and marketing costs:	
Picking expense	719.99
Grading and packing expense	1424.76
Containers	673.69
Hauling	183.46
Selling	317.31
Total harvesting and marketing cost	3319.21
Total crop cost	5723.85
Crop sales	5913.19
Net return	$ 189.34

	1976-77 range per acre	
	From	To
Yield (30 lb.)	944	1667
Total growing cost	$1907.71	$ 3653.82
Total harvesting and marketing cost	2265.60	4204.17
Total crop cost	4389.01	7328.24
Crop sales	3757.12	7596.60
Net return	$-631.89	$ 1437.56

[a]Reported by 3 growers averaging $20.83 per acre.

Table 26.--STAKED TOMATOES: Costs and returns in the Immokalee-Lee area 5-season average 1972-76 and 1976-77

Item	5-season average	1976-77	
Number of growers	13	14	
Number of acres	3133	4973	
Average acres per grower	241	355	
Average yield per acre (30 lb.)	910	624	
Growing costs:		Average per Acre	30 lb.
Land rent	$ 35.76	$ 41.71	
Seed	79.42	81.35	
Fertilizer	240.99	232.89	
Spray and dust	328.50	322.36	
Cultural labor	644.63	634.34	
Machine hire	85.25	56.40[a]	
Gas, oil and grease	76.40	82.16	
Repair and maintenance	116.29	124.92	
Depreciation	84.82	98.90	
Licenses and insurance	56.29	64.01	
Interest on production capital (9% - 5 months)	69.88	68.30	
Interest on capital invested (other than land)	12.72	14.84	
Miscellaneous expense	200.02	181.15	
Total growing cost	2030.97	2003.33	$ 3.211
Harvesting and marketing costs:			
Picking expense	605.30	357.53	.573
Grading and packing expense	789.52	612.40	.981
Containers	396.49	323.48	.518
Hauling	118.44	102.18	.164
Selling	125.28	91.04	.146
Total harvesting and marketing cost	2035.03	1486.63	2.382
Total crop cost	4066.00	3489.96	5.593
Crop sales	4603.93	3765.08	6.034
Net return	$537.93	$275.12	$ .441

	1976-77 range per acre From	To
Yield (30 lb.)	286	900
Total growing cost	$ 909.48	$ 3142.48
Total harvesting and marketing cost	729.30	2164.68
Total crop cost	1818.07	4786.34
Crop sales	1627.04	6029.84
Net return	$ -398.68	$ 1243.50

[a]Reported by 11 growers averaging $71.78 per acre.

Table 27.--STAKED TOMATOES: Costs and returns in the Manatee-Ruskin area 5-season average 1972-76 and 1976-77

Item	5-season average	1976-77	
Number of growers	12	12	
Number of acres	2232	2662	
Average acres per grower	186	222	
Average yield per acre (30 lb.)	715	742	
Growing costs:	Acre	Average per Acre	30 lb.
Land rent	$ 42.65	$ 44.48	
Seed	59.54	83.50	
Fertilizer	213.54	216.40	
Spray and dust	204.20	236.60	
Cultural labor	419.64	591.07	
Machine hire	21.83	25.14[a]	
Gas, oil and grease	68.03	79.39	
Repair and maintenance	80.96	90.70	
Depreciation	67.14	85.98	
Licenses and insurance	61.66	86.03	
Interest on production capital (9% - 5 months)	48.69	60.16	
Interest on capital invested (other than land)	10.07	12.90	
Miscellaneous expense	126.36	151.00	
Total growing cost	1424.31	1763.35	$ 2.376
Harvesting and marketing costs:			
Picking expense	330.41	380.90	.513
Grading and packing expense	701.28	772.04	1.041
Containers	329.14	398.37	.537
Hauling	90.17	116.01	.156
Selling	91.73	95.53	.129
Total harvesting and marketing cost	1542.73	1762.85	2.376
Total crop cost	2967.04	3526.20	4.752
Crop sales	3558.00	3612.52	4.868
Net return	$590.96	$ 86.32	$ .116

	1976-77 range per acre From	To
Yield (30 lb.)	483	1223
Total growing cost	$1249.12	$ 2576.19
Total harvesting and marketing cost	1141.33	2719.23
Total crop cost	2495.36	4650.34
Crop sales	1978.91	5487.78
Net return	$-781.61	$ 952.13

[a]Reported by 9 growers averaging $33.52 per acre.

D. L. Brooke

Economic Information Report 110

Costs and Returns from Vegetable Crops in Florida, Season 1977-78 with Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville 32611

April 1979

ABSTRACT

Costs and returns were obtained for 14 different vegetable crops in one or more of eight major producing areas for the 1977-78 season. Yields were generally better than a year earlier, a result of better weather. Cost increases were noted in three-fourths of the crops and areas. FOB prices were higher than a year earlier resulting in higher net returns to growers in 60 percent of the cases.

Key words: Economics, vegetables, annual costs, simple averages, purposive sample.

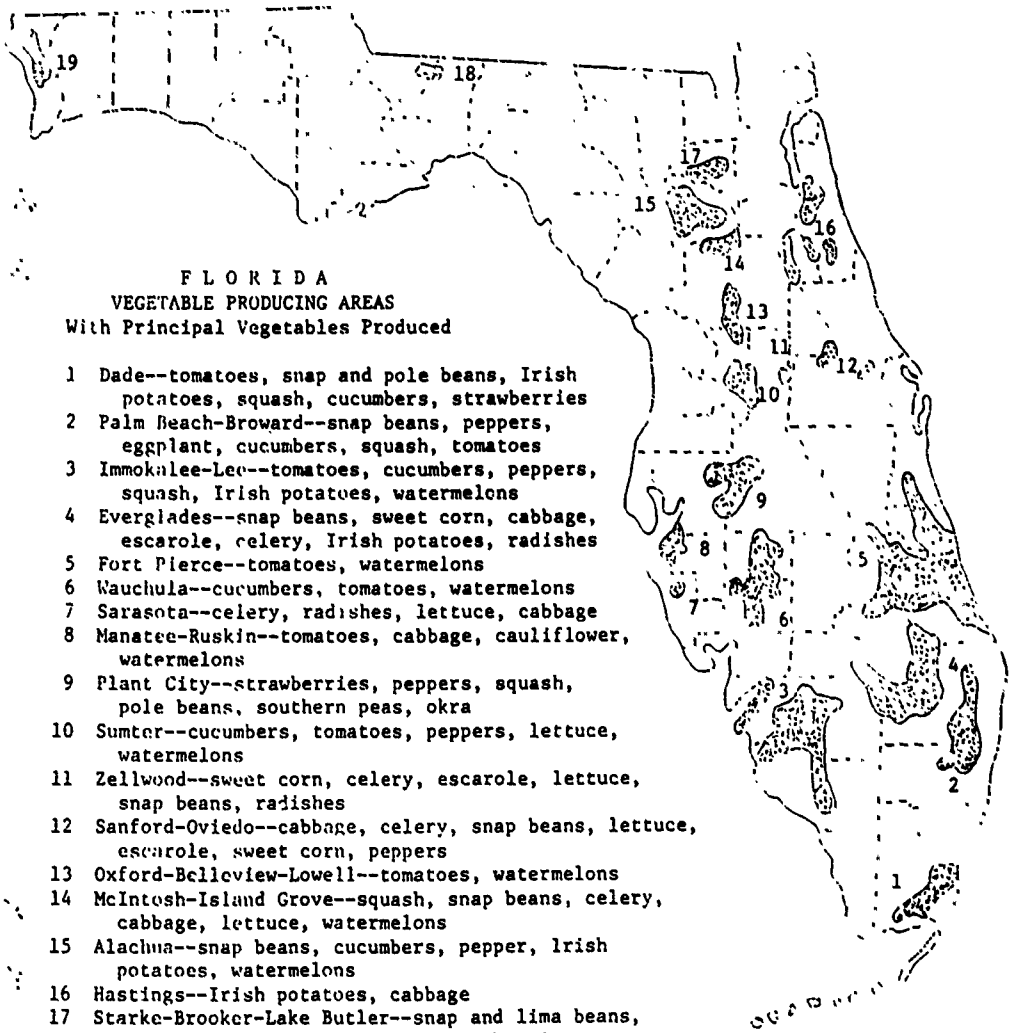
FOREWORD

This is the eighteenth in this series of summaries of costs and returns from the principal vegetable crops by major producing areas in Florida. There is a need among growers, commodity groups, credit agencies, research workers and teachers for current factual information of this type.

Data in this summary were gathered by personal interview with growers of the various vegetable crops. Growers' records of actual production costs were used when available, and estimates taken when records were not kept. As complete a breakdown of costs as possible was obtained from each grower. Insofar as possible, growing and harvesting costs have been separated and labor items excluded from costs of materials. In a few cases, where crop sales were not available from growers, they were computed on the basis of average prices received for the crop as reported by the Florida Crop and Livestock Reporting Service, Orlando, Florida.

ACKNOWLEDGMENTS

The writer wishes to express his appreciation to the vegetable growers for their excellent cooperation and also to the Florida Fruit and Vegetable Association, the Florida Crop and Livestock Reporting Service, Orlando, Florida, and to various county agents for much worthwhile assistance.



FLORIDA
VEGETABLE PRODUCING AREAS
With Principal Vegetables Produced

1 Dade--tomatoes, snap and pole beans, Irish potatoes, squash, cucumbers, strawberries
2 Palm Beach-Broward--snap beans, peppers, eggplant, cucumbers, squash, tomatoes
3 Immokalee-Lee--tomatoes, cucumbers, peppers, squash, Irish potatoes, watermelons
4 Everglades--snap beans, sweet corn, cabbage, escarole, celery, Irish potatoes, radishes
5 Fort Pierce--tomatoes, watermelons
6 Wauchula--cucumbers, tomatoes, watermelons
7 Sarasota--celery, radishes, lettuce, cabbage
8 Manatee-Ruskin--tomatoes, cabbage, cauliflower, watermelons
9 Plant City--strawberries, peppers, squash, pole beans, southern peas, okra
10 Sumter--cucumbers, tomatoes, peppers, lettuce, watermelons
11 Zellwood--sweet corn, celery, escarole, lettuce, snap beans, radishes
12 Sanford-Oviedo--cabbage, celery, snap beans, lettuce, escarole, sweet corn, peppers
13 Oxford-Belleview-Lowell--tomatoes, watermelons
14 McIntosh-Island Grove--squash, snap beans, celery, cabbage, lettuce, watermelons
15 Alachua--snap beans, cucumbers, pepper, Irish potatoes, watermelons
16 Hastings--Irish potatoes, cabbage
17 Starke-Brooker-Lake Butler--snap and lima beans, cucumbers, peppers, squash, strawberries
18 Quincy-Havana--pole beans, cucumbers, squash, tomatoes
19 Escambia--Irish potatoes

DEFINITIONS

Number of growers: Number of individual records or estimates of crop costs and returns included in each crop summary.

Number of acres: The total acreage planted by growers whose records or estimates were used. When a part of the planted acreage was lost soon after planting and replaced by another crop, the reduced acreage was used.

Average acres per grower: The number of acres of the particular crop divided by the number of growers.

Average yield per acre: The number of units per planted acre harvested.

Land rent: In the interests of uniformity, land rent was charged for all acreages and crops at the prevailing rate reported by growers in the area. This was done to avoid difficulties in the determination of a normal valuation, interest charge for use of land and capitalization of land values in a period of fluctuating values and prices. Taxes on farm real estate are excluded since rent is being charged.

Seed and seedbed includes the cost of seed or plants for planting the crop. If a seedbed was used, the figures, unless otherwise noted, include costs of labor and materials for growing plants as well as seed costs.

Fertilizer represents the actual cost of nutrient materials applied to produce the crop. Labor or machine costs of application are not included.

Spray and dust included only the cost of materials unless application labor is specified, in which case some machine costs may also be present. If weed control chemicals or soil fumigants were used, their cost also is included here.

Cultural labor contains the value of man labor, whether hired or family, to produce the crop from ground preparation until ready for harvest. It does not include supervision by the operator, since his compensation is to a great extent dependent upon returns from the sale of the crop.

Machine hire is the cost of machine work hired, including use of airplanes when applicable, in producing the crop. This item includes labor charges for the machine operator and charges for the use of equipment.

Gas, oil and grease include the cost of gas, oil and grease required to operate tractors, trucks, sprayers, pumps and other machinery in producing the crop. It may also include electrical power expenses for irrigation when utilized.

Repair and maintenance represent the cost of repairs to equipment used in producing the crop. It also includes the small tools such as hoes, rakes and shovels purchased and charged off as a current expenditure.

Depreciation includes the annual charge for depreciation and obsolescence of equipment and labor housing. When actual depreciation charges could not be obtained from records, they were computed by assuming a 10-year average life-use on all equipment on the basis of replacement value as indicated by the operator.

Licenses and insurance represent the cost of licenses and insurance items when chargeable to the farm business. Licenses include those for trucks and autos used on the farm. Insurance includes labor and crop insurance and fire or windstorm insurance on buildings and equipment. It excludes health or accident insurance for the operator or his family.

Interest on production capital was charged at the rate of 9 percent on all cash costs for the number of months required to grow and market the crop regardless of whether or not much production capital was actually borrowed. This percentage was used because it is a currently available borrowing rate.

Interest on capital invested (other than land) was charged at 9 percent of the actual or estimated annual depreciated value of the capital invested in machinery and equipment. It was assumed that all equipment was presently worth one half its replacement value.

Miscellaneous includes such items as wire, stakes, twine, plastic, office supplies, administrative expense other than value of the operator's management, legal and audit fees, telephone and telegraph and incidental expenses.

Harvesting and marketing expense, where possible, has been divided into two items: (1) picking and (2) grading and packing. Picking, cutting, or digging expense includes actual cost of harvesting the crop and preparing it for movement to packinghouse or wash house. Washing or grading and packing expense includes preparation of the product for shipment either in the field or at an adjacent packinghouse. It includes machinery and overhead costs in addition to labor. The same is true for all crops in all areas where grading and packing is done off the farm in packinghouses.

Containers include the cost of hampers, crates, bags or baskets in which the product is moved to market.

Hauling is the cost of movement of the product from field to packinghouse or loading point. It is often computed on a contract basis and includes labor and equipment items. In cases where hauling was preformed by the operator's trucks, the costs have been separated from production labor and machine expense items as nearly as possible.

Other includes the cost of precooling the commodity prior to shipment and, for celery and sweet corn, the contribution to the Marketing Agreement Program. Inspection fees, when incurred, are included in packinghouse charges and are not reported as a separate item.

Selling is the packinghouse, market, sales organization or dealer's charge for performing the sales service for the crop when deducted from the producer's price. The cost does not include charges for unloading, grading, packing, etc.

Crop sales are the gross returns to the grower before deduction of growing, harvesting and marketing costs.

Net return is the return to the producer after deduction of all expenses, in producing, harvesting and marketing the crop.

Proration of costs between crops: For such items as seed, fertilizer, spray and dust, airplane application and harvesting and marketing costs, growers' records or estimates for each crop were used to make the appropriate charges.

In the case of the cultural labor, however, no breakdown for the different crops produced on the individual farm could be obtained from the grower except in a very few cases when such records had been kept. The total cultural labor for all crops produced on each farm was, in most cases, prorated to the various crops on the basis of available data developed at the Florida Agricultural Experiment Stations with regard to man hours required in various parts of the state to produce different crops from land preparation to harvest. Except in a very few cases, a similar situation also applies to such items as machine hire, tractor fuel, oil and grease, repairs, depreciation and other production costs where records had not been kept showing the respective charges to different crops. Prorations were also made to these items on the basis of available data (D. L. Brooke, Fla. Agr. Exp. Sta. Bul. 660, June 1963).

In many cases individual growers did not incur every cost item. This applies especially to airplane application, machine hire, grading and packing, containers, hauling and precooling. Thus, these data are based only on the overall average for all growers contacted in each area. Footnotes have been used to set forth the number of growers and average costs for items not incurred by all growers in the sample.

Per-unit costs and returns were computed by dividing the average yield per acre in the sample into the various items of cost shown in the individual tables. They are merely averages of the data recorded and, in some cases, do not reflect the full cost of performing the service because all growers may not have incurred every item of cost.

Ranges per acre showing the lowest and the highest of the sampled observations for yields, costs and returns are included for each crop and area. This is intended to show growers and other interested parties the extremes that may be encountered in vegetable production.

Table 22.--TOMATOES: Costs and returns per acre in the Dade County area 5-season average 1973-77 and 1977-78

Item	5-season average	1977-78	
Number of growers	6	5	
Number of acres	4566	3565	
Average acres per grower	761	713	
Average yield per acre (30 lbs.)	480	720	
Growing costs:		Average per Acre	30 lbs.
Land rent	$ 40.13	$ 58.09	
Seed	24.05	33.80	
Fertilizer	234.12	203.50	
Spray and dust	253.32	396.09	
Cultural labor	208.11	356.21	
Machine hire	20.45	21.97[a]	
Gas, oil and grease	35.66	58.60	
Repair and maintenance	61.96	127.51	
Depreciation	43.91	89.23	
Licenses and insurance	34.41	67.70	
Interest on production capital (9% - 5 months)	37.15	58.10	
Interest on capital invested (other than land)	6.59	13.38	
Miscellaneous expense	78.54	225.80	
Total growing cost	1078.40	1709.98	$ 2.375
Harvesting and marketing costs:			
Picking expense	285.53	397.32	.552
Grading and packing expense	416.14	823.62	1.144
Containers	240.91	396.11	.550
Hauling	53.86	102.21	.142
Selling	67.79	108.03	.150
Total harvesting and marketing cost	1064.23	1827.29	2.538
Total crop cost	2142.63	3537.27	4.913
Crop sales	2325.04	4283.93	5.950
Net return	$182.41	$746.66	$ 1.037

	1977-78 Range per acre From	To
Yield (30 lbs.)	524	1020
Total growing cost	$ 1204.09	$ 2208.48
Total harvesting and marketing cost	1205.20	2628.54
Total crop cost	2409.29	4474.32
Crop sales	3272.66	6120.00
Net return	$ 115.91	$ 1645.68

[a]Reported by 4 growers averaging $27.46 per acre.

Table 23.--STAKED TOMATOES: Costs and returns per acre in the Immokalee-Lee area 5-season average 1973-77 and 1977-78

Item	5-season average	1977-78	
Number of growers	13	14	
Number of acres	3432	4981	
Average acres per grower	264	356	
Average yield per acre (30 lbs.)	868	792	
Growing costs:	Acre	Average per Acre	30 lbs.
Land rent	$ 38.59	$ 64.70	
Seed	86.04	97.97	
Fertilizer	245.80	239.31	
Spray and dust	333.22	374.94	
Cultural labor	668.84	766.45	
Machine hire	79.54	55.04	
Gas, oil and grease	82.62	114.53	
Repair and maintenance	122.44	145.31	
Depreciation	87.19	119.31	
Licenses and insurance	59.25	86.90	
Interest on production capital (9% - 5 months)	72.17	83.22	
Interest on capital invested (other than land)	13.08	17.90	
Miscellaneous expense	208.32	274.05	
Total growing cost	2097.10	2439.63	$ 3.080
Harvesting and marketing costs:			
Picking expense	537.25	537.53	.679
Grading and packing expense	790.76	807.09	1.019
Containers	404.62	396.08	.500
Hauling	118.14	160.42	.202
Selling	124.63	119.46	.151
Total harvesting and marketing cost	1975.40	2020.58	2.551
Total crop cost	4072.50	4460.21	5.631
Crop sales	4554.38	4930.04	6.224
Net return	$481.88	$469.83	$ .593

	1977-78 Range per acre From	To
Yield (30 lbs.)	379	1224
Total growing cost	$ 1154.50	$ 3500.24
Total harvesting and marketing cost	986.91	3101.99
Total crop cost	2155.78	6011.24
Crop sales	2166.29	7835.68
Net return	$ -964.33	$ 2618.64

Table 24.--STAKED TOMATOES: Costs and returns per acre in the Manatee-Ruskin area 5-season average 1973-77 and 1977-78

Item	5-season average	1977-78	
Number of growers	12	12	
Number of acres	2280	2184	
Average acres per grower	190	182	
Average yield per acre (30 lbs.)	751	627	
Growing costs:	Acre	Average per Acre	30 lbs.
Land rent	$ 45.34	$ 46.19	
Seed	71.42	97.24	
Fertilizer	222.84	216.39	
Spray and dust	221.85	267.83	
Cultural labor	463.38	527.74	
Machine hire	22.88	18.20	
Gas, oil and grease	74.32	90.85	
Repair and maintenance	85.54	109.69	
Depreciation	75.69	90.06	
Licenses and insurance	67.80	94.47	
Interest on production capital (9% - 5 months)	53.39	62.07	
Interest on capital invested (other than land)	11.35	13.51	
Miscellaneous expense	143.32	186.39	
Total growing cost	1564.12	1820.83	$ 2.902
Harvesting and marketing costs:			
Picking expense	347.13	406.53	.648
Grading and packing expense	755.19	652.75	1.040
Containers	370.06	352.97	.563
Hauling	101.18	106.03	.169
Selling	91.61	96.68	.154
Total harvesting and marketing cost	1665.17	1614.96	2.574
Total crop cost	3229.29	3435.79	5.476
Crop sales	3710.77	3508.90	5.593
Net return	$481.48	$ 73.11	$ .117

	1977-78 Range per acre From	To
Yield (30 lbs.)	237	917
Total growing cost	$ 1328.35	$2160.62
Total harvesting and marketing cost	695.68	2347.52
Total crop cost	2307.93	4508.14
Crop sales	1466.75	5043.75
Net return	$ -1071.10	$ 943.01

[a]Reported by 10 growers averaging $21.84 per acre.

D. L. Brooke

Economic Information
Report 127

Costs and Returns from Vegetable Crops in Florida, Season 1978-79 with Comparisons

Food and Resource Economics Department
Agricultural Experiment Stations
Institute of Food and Agricultural Sciences
University of Florida, Gainesville 32611

March 1980

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Table 21.—TOMATOES: Costs and returns per acre in the Dade County area, 5-season average 1974-78 and 1978-79

Item	5-season average	1978-79	
Number of growers	6	4	
Number of acres	4104	3072	
Average acres per grower	684	768	
Average yield per acre (30 lbs.)	564	628	
Growing costs:	Acre	Average per Acre	30 lbs.
Land rent	$ 45.27	$ 76.12	
Seed	28.99	44.01	
Fertilizer	246.44	194.28	
Spray and dust	304.23	430.61	
Cultural labor	256.90	454.49	
Machine hire	21.00	25.74	
Gas, oil and grease	43.68	65.38	
Repair and maintenance	79.41	107.64	
Depreciation	56.05	72.19	
Licenses and insurance	44.00	76.59	
Interest on production capital (9% - 5 months)	44.69	66.01	
Interest on capital invested (other than land)	8.40	10.83	
Miscellaneous expense	121.70	285.33	
Total growing cost	1300.76	1909.22	$3.040
Harvesting and marketing costs:			
Picking expense	327.13	367.54	.585
Grading and packing expense	538.32	666.38	1.061
Containers	294.71	347.37	.553
Hauling	66.86	147.87	.236
Selling	82.28	147.90	.236
Total harvesting and marketing cost	1309.30	1677.06	2.671
Total crop cost	2610.06	3586.28	5.711
Crop sales	2918.07	4146.03	6.602
Net return	$308.01	$559.75	$ .891

	1978-79 Range per acre	
	From	To
Yield (30 lbs.)	369	739
Total growing cost	$1786.67	$2099.77
Total harvesting and marketing cost	1014.36	2070.19
Total crop cost	3114.13	3856.86
Crop sales	2396.54	4949.84
Net return	$-717.59	$1092.98

Table 22.--STAKED TOMATOES: Costs and returns per acre in the Immokalee-Lee area 5-season average 1974-78 and 1978-79

Item	5-season average	1978-79	
Number of growers	14	11	
Number of acres	4074	3531	
Average acres per grower	291	321	
Average yield per acre (30 lbs.)	857	894	
Growing costs:	Acre	Average per Acre	30 lbs.
Land rent	$ 44.59	$ 77.82	
Seed	89.09	120.39	
Fertilizer	254.17	253.18	
Spray and dust	346.70	438.42	
Cultural labor	693.45	749.62	
Machine hire	77.86	50.80[a]	
Gas, oil and grease	94.35	103.19	
Repair and maintenance	131.27	179.40	
Depreciation	95.04	122.07	
Licenses and insurance	64.46	106.99	
Interest on production capital (9% - 5 months)	75.51	87.64	
Interest on capital invested (other than land)	14.26	18.31	
Miscellaneous expense	217.60	257.27	
Total growing cost	2198.35	2565.10	$2.869
Harvesting and marketing costs:			
Picking expense	500.26	570.31	.638
Grading and packing expense	805.07	903.77	1.011
Containers	416.58	465.71	.521
Hauling	130.89	171.77	.192
Selling	123.54	164.23	.184
Total harvesting and marketing cost	1976.34	2275.79	2.546
Total crop cost	4174.69	4840.89	5.415
Crop sales	4656.25	5257.44	5.881
Net return	$481.56	$416.55	$ .466

	1978-79 Range per acre From	To
Yield (30 lbs.)	425	1347
Total growing cost	$ 1962.94	$ 3062.02
Total harvesting and marketing cost	999.47	3368.00
Total crop cost	3089.19	6031.89
Crop sales	2338.30	7867.35
Net return	$-1553.22	$ 1835.46

[a]Reported by 8 growers averaging $69.85 per acre.

Table 23.--STAKED TOMATOES: Costs and returns per acre in the Manatee-Ruskin area 5-season average 1974-78 and 1978-79

Item	5-season average	1978-79	
Number of growers	12	13	
Number of acres	2220	3055	
Average acres per grower	185	235	
Average yield per acre (30 lbs.)	751	770	
Growing costs:		Average per Acre	30 lbs.
Land rent	$ 47.47	$ 53.24	
Seed	80.29	93.58	
Fertilizer	229.99	181.44	
Spray and dust	238.03	228.75	
Cultural labor	500.28	491.31	
Machine hire	21.65	37.05[a]	
Gas, oil and grease	81.37	99.25	
Repair and maintenance	92.43	127.82	
Depreciation	84.01	119.44	
Licenses and insurance	75.46	111.32	
Interest on production capital (9% - 5 months)	57.34	60.05	
Interest on capital invested (other than land)	12.60	17.92	
Miscellaneous expense	161.96	177.48	
Total growing cost	1682.88	1798.65	$2.336
Harvesting and marketing costs:			
Picking expense	368.49	537.21	.698
Grading and packing expense	766.94	891.46	1.158
Containers	390.61	404.60	.525
Hauling	109.86	143.15	.186
Selling	95.24	110.90	.144
Total harvesting and marketing cost	1731.14	2087.32	2.711
Total crop cost	3414.02	3885.97	5.047
Crop sales	3881.24	4553.63	5.914
Net return	$467.22	$667.66	$ .867

	1978-79 Range per acre From	To
Yield (30 lbs.)	459	1147
Total growing cost	$1089.93	$2634.59
Total harvesting and marketing cost	1194.67	3148.16
Total crop cost	2867.51	5782.75
Crop sales	2318.32	7503.06
Net return	$-604.25	$1978.30

[a]Reported by 11 growers averaging $43.79 per acre.

Cost of Production, Yields, and Net Returns Per Acre for Tomatoes in Dade County

Season	Net Returns (Dollars)	Yield (30 Lb. Cartons)	Cost of Production (Dollars)	Return as % of Costs
60-61	27.80	563	987	2.8
61-62	123.82	470	916	13.5
62-63	- 29.54	396	838	- 3.5
63-64	33.10	334	830	4.0
64-65	-125.54	222	682	-18.4
65-66	-113.21	278	745	-15.2
66-67	- 40.05	314	866	- 4.6
67-68	191.54	317	871	22.0
68-69	2.29	295	893	0.2
69-70	136.26	323	1077	12.7
70-71	184.97	400	1272	14.5
71-72	38.57	336	1168	3.3
72-73	126.90	303	1192	10.6
73-74	477.14	530	2134	22.4
74-75	604.08	822	3139	19.2
75-76	169.60	543	2603	6.5
76-77	-457.41	204	1636	-28.0
77-78	746.66	730	3537	21.1
78-79	559.75	628	3586	15.6

Average Returns 1960-61 to 1967-68 = 0.6 percent
Average Returns 1968-69 to 1978-79 = 8.9 percent

Source: D. L. Brooke, Costs and Returns from Vegetable Crops in Florida, various issues.

EXHIBIT G

Comparison of Export Sales & Constructed Value

NONCONFIDENTIAL VERSION

Total Revenue From Export Sales	Constructed Value (Cost + 8%)
$36,266,791	$29,544,005

SOURCE: Growers' Submissions.

Mr. BAFALIS. Let me ask you—either one of you—a question: Are Mexican tomatoes imported in various sizes and grades packed in the same boxes?

Mr. MACRORY. Not really, Congressman, it is all grade 1.

Mr. BAFALIS. What about size?

Mr. MACRORY. Well, it depends on how you define size, Congressman. Now, the size that——

Mr. BAFALIS. Small, medium, and large sizes.

Mr. MACRORY. Well, if I could refer you to the diagram which is attached to my statement, you will see exactly; this is a schematic representation, and it shows that there is very little size variation. Now it is interesting that under the——

Mr. BAFALIS. Let me make it clear for the committee. I want to be sure that you inform the committee that when you send tomatoes across the border, these are all the same size tomatoes in one box.

Mr. MACRORY. No, sir, that is not the case at all.

Mr. BAFALIS. I was sure that that was not what you were saying, but in the picture it looks as if that is what you are saying.

Mr. MACRORY. No; I am sorry, I did not mean to imply that it all. I also point out that under the terms of the current marketing order, the current Florida marketing order, which is also attached to my statement—the Florida growers are in fact permitted to comingle all but the two smallest sizes. It says—I am reading from the order—"Tomatoes of designated sizes may not be comingled unless they are over 215/32 inches in diameter." And so in fact Florida itself this year is permitted to comingle all but the—those smallest two sizes.

Mr. BAFALIS. Are you then telling the committee that the way Florida sizes its tomatoes, is basically the same way that Mexico sizes their tomatoes so that when a person buys a box of medium sized tomatoes from Mexico he is basically getting the same assortment of sizes that he is from Florida?

Mr. MACRORY. No; because the Mexican tomatoes, just as the California tomatoes and Texas tomatoes and northern Florida tomatoes, have size designations still based upon the 6 by 6 and 6 by 7 and 5 by 5, and so forth; that is the old traditional method of sizing.

Now, the USDA no longer uses the medium-large-small designation. The Florida tomato growers have gone back to a size specification which looks like the traditional one; they use 7 by 7, 6 by 7, 6 by 6 and 5 by 6. But the actual dimensions have been changed slightly.

Mr. BAFALIS. When a box of medium sized tomatoes—see if you can be specific on this answer—comes across from Mexico into this country, what will we find inside that box?

Mr. MACRORY. Let me refer you——

Mr. BAFALIS. According to size.

Mr. MACRORY. The easiest way to do this is to refer you to, for example, page 5 of exhibit A to my testimony which shows the 5 by 6 configuration. And it will show you the very small degree of size variation. If you also could turn, Congressman, to page 9 of my testimony, there is a footnote in there which shows the size designations as used by Mexico and the others.

Mr. BAFALIS. I do not have a page 9.

Mr. MACRORY. If you will look at footnote 2, Congressman, and if you look at the pre-1973 designation, that is the one that is still used by Mexico. And take, for example, the 7 by 7, which is the smallest size, the range you will find in there is between 2 inches in diameter and 2 6/16.

Mr. BAFALIS. In a medium box, that is the only variation you will find?

Mr. MACRORY. Yes. The variation in a medium box which is, say, 6 by 6 or 5 by 6, you can see the figures there. The minimum is 2 8/16. The maximum is 2 14/16. So the variation there is six sixteenths of an inch. And in the 5 by 6, if my mathematics is right, it is eight-sixteenths, a half inch variation.

Mr. BAFALIS. Let me ask this question: Does the United States ship into Mexico when Mexico is producing tomatoes?

Mr. MACRORY. I beg your pardon?

Mr. BAFALIS. Does the United States ship into Mexico when Mexico is producing tomatoes?

Mr. MACRORY. I have heard that they ship very small quantities, but I think the cost is such that it would be very difficult for Florida to be competitive with locally grown Mexican tomatoes.

Mr. BAFALIS. What about Texas and California?

Mr. MACRORY. You see, the Mexican industry which produces for export to the United States itself does not sell much in Mexico. All it sells is the low grade tomatoes because there is so much local production in Mexico. There is an enormous amount of local production so that anybody who is trying to ship from a distance simply cannot compete because the transportation costs are quite high.

Mr. BAFALIS. Let me ask either of you: Why is it that there is great opposition to sizing tomatoes as we do in Florida?

Mr. MACRORY. There is no objection to sizing, as such, Congressman; there is an objection to requiring the Mexicans to pack their tomatoes, which are a different type of tomato—they are at a different stage of maturity—in the way that Florida, really southern and central Florida, alone packages. No other area in the United States that we are aware of packages in the same way as southern and central Florida. And we believe that to impose these requirements on Mexico would make it impossible for them to continue shipping vine ripe tomatoes. They would have to switch to the mature green. And they prefer to continue to ship vine ripe. They believe there is in some areas, at least, a customer preference for vine ripe and in this way the customer gets a choice.

We believe very firmly that it would not be possible to continue to ship vine ripes if the terms of this marketing order were imposed upon us.

Mr. BAFALIS. Let's leave aside the marketing order. What about just the sizing aspect of it? Do you have any problem with that?

Mr. MACRORY. Could you refer me specifically to which part of the order?

Mr. BAFALIS. I do not have that in front of me, but the order includes grading and size.

Mr. MACRORY. Well, the size restrictions do apply to Mexico under the terms of section 8(e), so that Mexico cannot ship any tomatoes into the United States which are smaller than the minimum size imposed by the Florida marketing order. And there has never been

any objection to that, except you may recall 10 years ago when there was a marketing order introduced which imposed different size restrictions on the vine ripe and the mature green. The minimum size for vine ripe was considerably larger than for the mature greens. So the effect of the order was to keep more Mexican tomatoes off the market than Florida. We did object and we went to court and eventually the matter was settled—the USDA agreed not to do that in future.

But we have never objected to the minimum size requirements as such. They have always applied to Mexican tomatoes. Mexico has never shipped in tomatoes beneath the minimum size imposed by the Florida marketing order. And in fact in terms of grade, they have always exceeded the minimum requirements.

Mr. BAFALIS. You also mentioned in your testimony that the increase in Florida—it has increased rather dramatically, although since the increase the farms are very large. Have you any explanation as to why we do not have very small tomato farmers in Florida any more?

Mr. MACRORY. I just would like to make one correction, Congressman. I certainly did not mean to imply that there had been a dramatic reduction in acreage. In fact, looking at the figures in 1970–71 43,000 acres were planted under tomatoes in Florida. And in the 1977–78 season, the figure was 42,100. So, what I think I meant to say was there has been a slight decline in acreage, but coupled with higher productivity. I suspect part of the decline in the number of farms is due to the higher productivity and to the increased mechanization. I understand there are now mechanical harvesters used to pick the mature greens. And it is simply difficult for small farmers to obtain the kind of capital that is necessary. And I think this is a trend that——

Mr. BAFALIS. You do not believe that the foreign market is in any way affecting the smaller farmer's ability to produce?

Mr. MACRORY. I suspect it is much more competition from large American farmers that has done it. As I say, I think this is a trend in every farming sector in this country, whether or not there is competition for imports. For example, the lettuce industry faces no import competition at all. There simply is no lettuce imported. I suspect you would find exactly the same trend among lettuce farmers, that is, increased size.

Mr. BAFALIS. Is that same trend true in Mexico?

Mr. MACRORY. I really do not know. There is a legal limit on the amount of farmland that an individual Mexican can own of 200 hectares, which certainly places a limit on the size of farms there. Perhaps that would be something that the Congress might consider.

Mr. BAFALIS. It is interesting that the small Mexican farmer is able to compete with the large giant in this country, but the small farmer in this country cannot compete with the small farmer in Mexico.

Mr. MACRORY. Well, I——

Mr. BAFALIS. That issue should raise some concern.

Mr. MACRORY. I have learned through my exposure in the last year and a half to the industry that the economics of agriculture are certainly complex.

Mr. BAFALIS. I think we have all learned that.

Mr. MACRORY. And I am certainly am not qualified to say why small farmers are diminishing in number.

Mr. BAFALIS. Mr. Chairman, I will not belabor this any longer. You have been very kind to sit here.

Mr. JONES. Thank you very much, and I thank both of you for testifying.

This will conclude today's hearings on the current tariff and trade bills and the customs valuation protocol.

The record of the hearing will remain open for further written statements until the close of business on Thursday the 24th.

The subcommittee is adjourned subject to the further call of the Chair.

[Thereupon, at 4:13 p.m., the subcommittee was adjourned subject to the call of the Chair.]

CERTAIN TARIFF AND TRADE BILLS

THURSDAY, MAY 8, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met at 10:06 a.m., pursuant to notice, in room 334, Cannon House Office Building, Hon. Charles A. Vanik (chairman of the subcommittee) presiding.

[EDITOR'S NOTE: The testimony received during this day's hearing on the subject of the operation of the generalized system of preferences is being printed separately.]

Mr. VANIK. We will now proceed with the administration witnesses from the Commerce Department, USTR, and the Customs Service to testify on each of the tariff bills.

Who do we have here from the administration, is William Cavitt here? William Merkin? We will have at the table William Cavitt, Director, Import Policy Division, Department of Commerce; William Merkin, international economist, Office of the Assistant U.S. Trade Representative for GATT Affairs; and Arthur Rettinger, Office of the Chief Counsel, U.S. Customs Service.

I think as I indicated we will go through the tariff bills in the order in which they are listed in my press release. So let us proceed with Mr. Schulze's bill, H.R. 7173.

STATEMENT OF WILLIAM CAVITT, DIRECTOR, IMPORT POLICY DIVISION, DEPARTMENT OF COMMERCE, ACCOMPANIED BY WILLIAM MERKIN, INTERNATIONAL ECONOMIST, OFFICE OF THE ASSISTANT U.S. TRADE REPRESENTATIVE FOR GATT AFFAIRS; STEPHEN C. KAMINSKI, U.S. DEPARTMENT OF COMMERCE; ARTHUR RETTINGER, OFFICE OF THE CHIEF COUNSEL, U.S. CUSTOMS SERVICE; AND GEORGE STEWART, CHIEF, DRAWBACK AND BONDS BRANCH, U.S. CUSTOMS SERVICE

Mr. CAVITT. Mr. Chairman, I do not have a list of the bills.

Mr. VANIK. I thought we had the press release. Do you have that? There is a copy for you. This is H.R. 7173, to extend for an additional temporary period the existing suspension of duties on certain classifications of yarns of silk.

Mr. CAVITT. Thank you, Mr. Chairman. I am William H. Cavitt, Director of the Import Policy Division at the U.S. Department of Commerce. I appear on behalf of the administration to testify on seven mis-

cellaneous tariff bills, the first of which, as you have indicated, is H.R. 7173. The administration has no objection to the enactment of this bill, Mr. Chairman, which would extend a longstanding duty suspension on certain silk yarns. There is virtually no domestic production of this product. Continued duty-free treatment will keep costs lower for U.S. producers using these yarns. Indeed, Mr. Chairman, inasmuch as this particular duty suspension has been in effect for a number of years, and inasmuch as there is no domestic production, we would look favorably also upon a proposal to make this duty suspension permanent. I know in an earlier hearing the chairman noted difficulties and concerns that he and members of the committee have had with recurring treatment of bills before this committee, particularly these so-called minor duty suspension bills, and that to the extent that we could, one way to solve that problem would be to make a number—take a number of these bills that recur Congress after Congress and make them permanent. This is one in which we would favor such a move.

Mr. VANIK. That is one of my questions. Would you be willing to make this permanent?

Mr. CAVITT. Yes.

Mr. VANIK. We have periodically suspended this duty since 1959 and there continues to be no domestic production. I think we ought to just recognize that fact. What do they do with the silk yarns, go into fabrication of certain cloth or what? As long as you are testifying why do you not just go ahead and finish your statement on all the bills. Then we will deal with the USTR and anyone else who wants to testify on the other items.

Mr. CAVITT. I will be skipping over H.R. 7167—we have someone else here to testify on that—and move on to H.R. 7047, to suspend the duty on certain flat knitting machines.

Mr. Chairman, the administration favors the intent of this bill, but cannot support it as written. We understand that while it does not intend to do so, the bill covers narrow-bed V-bed flat knitting machines which are domestically produced by the Lamm Knitting Machine Corp. of Chicopee Falls, Mass. I understand that the bill was intended to cover only wide-bed V-bed flat knitting machines, which have not been produced in this country for 20 years. The administration would favor H.R. 7047 provided it were amended in two ways: first, to limit the product coverage to machines "over 20 inches in width," and second, to leave the column 2 rate of duty unchanged at 40 percent ad valorem rather than making it duty free.

As to the second point the administration prefers that any reduction in the column 2 tariff be reserved for possible future bilateral commercial negotiations with the nonmarket economies concerned. I am further advised, Mr. Chairman, that there is an administrative problem in the bill as written with respect to the concept of new versus used machines. In the proposed description of the goods to be covered it says "except used." Customs would be much more comfortable if there were no reference to the used machines, that the substance of the matter being what it is, it is really irrelevant whether they are new or used.

Mr. VANIK. Do you have any reason to believe that the importers of these machines will pass the duty savings on to the consumers, the

knitwear manufacturers? Do you have any reason to feel that the price of the equipment will be reduced because of the duty treatment?

Mr. CAVITT. We have been given reason to believe that that would be the case. We understand those people will be testifying here today, representative for them. You might wish to put that to them directly.

Mr. VANIK. Does any member have any question on this bill? I assume not.

Mr. CAVITT. H.R. 7054, which provides for proposed duty increase on plastic netting. Mr. Chairman, H.R. 7054 would create a separate tariff line item for plastic netting to be dutiable at 17 percent ad valorem. There would be an increase from the current most-favored-nation rate of 6 percent ad valorem. The administration is opposed to this proposed duty increase. We have no information available to us that increased imports of plastic netting have seriously injured or are threatening to injure the domestic industry. If the industry considers that it is injured it has recourse to established administrative procedures by the Congress under the Trade Act of 1974. We believe that this process, which involves a thorough investigation by the USITC is the appropriate recourse for the domestic plastic netting industry if it feels it is faced with injurious import competition. In addition, I note there are numerous technical problems with the language of the bill as drafted.

In the interest of time this morning, Mr. Chairman, we know you have a limited amount of time, I do not propose to go into these in detail. They are, however, laid out in the written report of the Department of Commerce to the committee, which will be forthcoming.

Mr. VANIK. Any further questions? The chair hears none. Move on to the next bill.

Mr. CAVITT. Next bill is H.R. 7063, amend the Tariff Act of 1930 to increase the dollar value of merchandise eligible for informal entry. The administration is not in a position at this time to give a final opinion on 7063. We are studying the bill closely and as written have serious problems with it. We are, however, looking to try to find ways to suggest amendments to the committee which would provide the opportunity for us to be able to support or at least have no objection to the enactment of such a bill. In particular, the administration is concerned about the possible loss of statistical information if the informal entry level is raised to $600. If statistical information is not collected and published on goods entering the United States and valued between $250 and $600, serious problems could develop in the enforcement of import relief measures and in the conduct of our textile agreements program. In addition, there could be a serious loss of information in developing import impact data and in continuing trade negotiations with other countries.

Faced with these various difficulties we are working with the Customs Service and other interested parties in the administration to see if we cannot find proposals with which we could come forward that would resolve these difficulties. Moreover, the Customs Service is studying the implications of such an amendment for its workload and consequently for its budget. They suspect that raising the informal entry level while providing for continued collection of statistics on the same

basis as currently collected would result in a large increase in Customs workload.

Mr. VANIK. All right. Any questions?

Mr. SCHULZE. How long has the $250 threshold been in effect?

Mr. RETTINGER. The $250 limit has been in effect since 1953.

Mr. SCHULZE. If we took into account inflation, it seems to me the higher figure would be appropriate at this time. If not $600, do you have any recommendations as to a figure which would be more appropriate?

Mr. RETTINGER. As a practical matter this concept of raising the informal entry limit was brought up several years ago, in H.R. 8149, 95th Congress and was pulled out of the Customs Modernization Act at that point because of difficulty with the statistical gathering problems involved in raising that limit. Those still remain problems and unless we can reach a decision within the administration as to how to clarify that and get the statistics that census needs, while still maintaining the benefit that informal entry gives, we cannot accomplish much.

Mr. SCHULZE. So the gathering of the statistical data is still the main concern?

Mr. RETTINGER. At this point that is the main holdup. The concept of the bill of making things easier for importers both commercial and noncommercial to import by using informal entry is supported by the administration, provided that we do not lose any of the necessary statistics that we currently get.

Mr. VANIK. No further questions.

Move on to the next bill.

Mr. CAVITT. Next bill, Mr. Chairman, is H.R. 7087, to increase the column 2 rate of duty on anhydrous ammonia. Mr. Chairman, the administration is opposed to the enactment of this bill. I note that the domestic industry is seeking to obtain import relief through the legislative process, having failed to get it through the administrative procedures provided by Congress in section 406 of the Trade Act of 1974. My personal opinion, Mr. Chairman, is that to grant such a request would thwart due process and encourage other unsuccessful petitioners of all persuasions—persuasions in the sense of whether it be 201 import relief cases or 301 unfair trade practice cases or 337 cases to seek legislative relief. Once one starts down that road, I do not know where one stops. In the instant case the domestic anhydrous ammonia industry has utilized these procedures, that is to say those of 406 of the Trade Act of 1974. In 1979 an ad hoc group of 13 producers of ammonia filed a petition with the ITC alleging that imports of anhydrous ammonia from the Soviet Union were disrupting domestic markets. The ITC conducted an investigation and determined that imports of ammonia were disrupting or threatening to disrupt the domestic market. Following the review of the case by the Interagency Trade Policy Staff Committee the President determined that import relief in the form of quantitative restrictions was not in the best economic interest of the United States. In announcing his decision the President noted the improved outlook for the domestic ammonia industry and forecasts of increased agricultural production.

In January 1980, the President used his emergency powers under section 406 to establish quotas on Soviet ammonia to guard against

possible market disruption brought about by changes in market conditions, resulting from the cessation of grain sales to the Soviet Union. By law the USITC conducted another investigation under section 406. As a result of the second investigation the ITC found that market disruption did not exist. At that point the President dismantled the emergency quota as that had been put in place just 2 to 3 months earlier. The ITC report issued in April 1980 summarized the current economic conditions in the amomnia industry. Briefly, Mr. Chairman, they were these: capacity utilization rose to 93 percent in April 1980 as compared to 77 percent in April 1979; profitability of the industry increased from a ratio of net operating profit to total sales of 1 percent in 1978 to 5 percent in 1979. U.S. production increased more than 1 million tons in 1979 over 1978 levels to a record 18.1 million short tons. Finally, imports from all sources reached record high levels in 1979. The suspension of grain sales to the Soviet Union was expected to influence negatively the outlook for the domestic ammonia industry. This has not been the case. Output and prices are near expectation levels despite the cessation of grain sales. Given that the domestic industry appears to be in a healthy position and given the negative finding of market disruption by ITC, the administration is opposed to legislating import relief for this industry, Mr. Chairman.

Mr. FRENZEL. Mr. Chairman, I think the witness has missed the thrust of the bill. As far as I know this bill was not introduced to provide any import relief for the industry. The two industry representatives that I have talked to do not support the bill. They want some other kind of relief, and we will let them speak for themselves later on. The bill was introduced after the ITC decision by me, even though I agreed with the ITC that there was no injury. But I was a little nervous about dependency on a foreign supplier like the U.S.S.R. which I found to be growing when I took a look at the figures. I felt a column 2 duty would be a very gentle way of establishing a procedure whereby the dependency might not grow so fast or might no get so big that it was something that the country could not handle.

May I then have your opinion of the bill based on that intent, since you now know it is not a domestic industry bill nor is it one that is put in to give them any special relief?

Mr. CAVITT. Mr. Chairman, I am advised that the Department of Agriculture in particular is greatly concerned about the possible imposition of tariff on a good or on a commodity that is considered to be vital to the agricultural interests of the United States. Moreover, there are adequate supplies, suppliers, Mr. Frenzel, from whom ammonia can be obtained from other countries.

Mr. FRENZEL. Is there a representative of the Agriculture Department here present?

Mr. CAVITT. There is no one here today, Mr. Frenzel, who can speak to the issue.

Mr. FRENZEL. Perhaps, Mr. Chairman, we can get some information from them later.

Mr. VANIK. Why do we not just——

Mr. FRENZEL. That is certainly a better argument than your first one.

Mr. VANIK. If possible, why can we not get someone from Agriculture here before we close this hearing today?

[The following was subsequently received:]

RESPONSE TO QUESTIONS POSED BY HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE

Question. How do current export prices of U.S. produced ammonia compare with the price of Soviet ammonia imported by the United States?

Answer. According to Census Bureau customs data, during the month of March 1980 the average unit value of U.S. ammonia exports was $102.64 per short ton while the value of ammonia imported from the Soviet Union was $100.23.

Question. What has been the relationship between recent increases in U.S. ammonia prices and increases in domestic natural gas prices?

Answer. The lowest ammonia prices in the last five years were reached in 1978. In May of that year the spot price of ammonia bottomed at $78–83 per short ton (f.o.b. U.S. Gulf). In May 1979 the spot price reached $105–112 a ton, a 35 percent increase. In May 1980 the spot price is around $135–$140 per ton, 27 percent higher than a year earlier.

Prices farmers pay for anhydrous ammonia have increased in a similar fashion after reaching the 5 year low of $160 per ton in December 1978. Farm level prices increased steadily reaching $199 in December 1979, 24 percent higher than a year earlier. By March 1980 (the most recent farm level price available) the U.S. farmer paid, an average, $229 per ton, 15 percent higher than just 3 months earlier.

The ITC recently conducted a survey of the domestic anhydrous ammonia industry and learned that the average price paid by ammonia producers for natural gas increased 22 percent from $1.27 per 1,000 cubic feet in 1978 to $1.55 in 1979. No similar ammonia industry statistics are yet available for 1980. However, Green Markets, a weekly fertilizer publication, publishes U.S. natural gas prices. In early 1979 firm gas contracts in the West South Central region (where most ammonia plants are located) were priced at $1.71/million BTUs and had increased 23 percent to $2.10 in early 1980.

From these data it can be concluded that spot ammonia prices have been rising significantly more rapidly in the past two years than have the prices of natural gas. Farm level ammonia prices have risen slightly faster than gas prices.

Mr. FRENZEL. It would be nice if you could—maybe they could get here before noon or whenever we close down, because that is far more interesting. I would ask STR if they think it is good trade policy that we become dependent on the U.S.S.R. say for 10 or 15 percent of our anhydrous ammonia. Is that a good situation?

Mr. MERKIN. Well, again, I am not privy to information on exactly the extent of our dependency upon the Soviet Union. But we do realize that there are other sources for ammonia, and if you have this varied sourcing of a product, I do not see how our dependency can be that great. It would not be an OPEC-type situation, in my mind.

Mr. FRENZEL. As I understand the problem, there are domestic facilities that are not producing at full capacity which if the Russian imports continue to increase are likely to be closed down or terminated completely. In that case, we do build dependency. That was the reason that I introduced the bill. But I think that is probably something that is better discussed with the Agriculture representative later.

Thank you, Mr. Chairman.

Mr. VANIK. The next bill, Mr. Jenkins' bill.

Mr. CAVITT. H.R. 7145 would extend the temporary reduction in the column 1 or MFN rate of duty on levulose until the close of December 31, 1981. The administration has no objection to the enactment of this bill, Mr. Chairman. The duty was first lowered by Congress on June 29, 1978, from 20 percent to 10 percent ad valorem. The duty reduction is intended to enable a company located in the United States to continue to market levulose while it builds a plant to manufacture the product in this country. This plant is expected to come

onstream by mid-1981. There currently is no domestic production of the product. The levulose being imported does not compete directly with sugar or sucrose. Moreover, the imported cost of levulose is close to 70 cents, more than three times the price of imported sugar. We believe continuation of the 10-percent duty on levulose through 1981 would not cause any harm to the domestic producers and indeed eventually could aid in the eventual self-sufficiency of the United States in the production of this product.

Mr. JENKINS. I would like to submit a statement. I will not read the statement, but I would like to submit a statement for the record in support of this bill.

Mr. JONES. If there is no objection, it will be included in the record.

[The statement follows:]

STATEMENT OF HON. ED JENKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, the purpose of H.R. 7145 is to extend the temporary reduction of the column 1 rate of duty on levulose until December 31, 1981.

In 1977 the 95th Congress enacted legislation temporarily reducing the column 1 rate of duty on levulose from 20 percent ad valorem to 10 percent ad valorem. This temporary reduction is due to expire on June 30, 1980.

Levulose is a mono sacchride which represents a basic component of sugar. It is used primarily in special dietary preparations where the use of sugar must be avoided, such as with diabetics and in certain confections where caloric content needs to be lowered. While levulose is found in nature most commonly as a component of honey, there is no natural source of pure levulose. Its separation from other substances requires an expensive manufacturing process.

It is my understanding that there is currently no domestic producer of pure levulose. However, a domestic production plant is currently under construction in the State of Illinois which will, upon completion, provide a U.S. capability, after which time the importation of the substance will not be necessary.

In passing the existing temporary reduction of the duty on levulose in 1977, the 95th Congress was aware of this construction activity. The apparent reason for the June 30, 1980 termination of the temporary reduction was that it was anticipated at that time that the construction of this plant would be completed by June 30, 1980. It has come to my attention that this completion date cannot be met because of a number of unanticipated construction problems. It is now anticipated that the plant will be completed by mid-1981.

Therefore, this is a simple request to continue the current rate of duty on Levulose until December 31, 1981, rather than June 30, 1980 in order to allow further time for completion of this facility. Once domestic production is underway no further imports of Levulose are expected.

It is my understanding that the continuation of the present duty on the import of Levulose is not likely to pose a threat to any product of the U.S. natural sugar industry, or to other artificial sweeteners such as saccharin.

Since my introduction of H.R. 7145, it has come to my attention that there would likely be no adverse impact if Levulose were to be imported duty-free until December 31, 1981. I would certainly support an amendment at mark-up to that effect if there, in fact, would be no adverse impact.

Mr. JONES. Any other questions?

All right, our next bill is H.R. 7139 by Mr. Cotter to suspend the column 1 rates of duty on cigar wrapper tobacco for a 1-year period.

Mr. CAVITT. The administration is not in a position to give a final opinion today on H.R. 7139. We are sympathetic to the concerns of the cigar manufacturers. However, there is some concern by the Department of Agriculture that this bill, as currently written, would create a loophole that would allow the importation of filler tobacco duty free under the same tariff number as wrapper tobacco. We are

studying possible amendments that the administration could suggest that would assure that any tobacco coming in under the provisions of this bill would be wrapper tobacco. One option being considered is to provide a tariff rate quota for duty-free wrapper tobacco. We also are considering limiting the bill to cover TSUS 170.10 only with a quota. We are working with the cigar manufacturers on this problem. And we will get back to the subcommittee and have a written report on this bill as early as possible.

Mr. COTTER. Is there a representative of the ITC here who could comment on this?

Mr. JONES. Is there a representative from the International Trade Commission?

Mr. MERKIN. I do not believe so.

Mr. JONES. Do you have specific questions?

Mr. COTTER. No; I just wondered what their comments would be. You say Agriculture will get a report on this?

Mr. CAVITT. Yes, sir, I think they are going to be making a written report as well as the Department of Commerce and others.

Mr. JENKINS. Mr. Chairman.

Mr. JONES. Mr. Jenkins.

Mr. JENKINS. In view of the fact that the administration has not taken a position on this. I might reserve some questions that I have, if we are going to have an opportunity at a later time to question witnesses. Will we have these witnesses back since they are not taking a position on this bill at this time?

Mr. JONES. Do we have another day scheduled? You might hold open the 21st on bills on which you do not have a position. We will need to have the administration back before we proceed to mark up. So hold tentatively May 21.

Mr. JENKINS. I do have several questions I would like to get clarified before markup of the bill, and I might wait until then if the chairman desires.

Mr. JONES. Wait until then, or you may wish to submit them for the record and the administration can be prepared to answer those on that date.

Mr. JENKINS. Fine.

Mr. CAVITT. If you like, Mr. Jenkins, if you could give us copies of the questions, we will be happy to submit the responses for the record.

Mr. JENKINS. Fine; I will do that during this hearing.

Mr. JONES. Fine.

[The questions and answers follow:]

QUESTIONS AND ANSWERS ON CIGAR WRAPPER TOBACCO

Question. Does the legal definition of wrapper tobacco deal only with a description of the physical characteristics of the leaf?

Answer. The tariff definition of wrapper tobacco appears in the headnote to Part 13 of the Tariff Schedules of the United States:

"The term 'wrapper tobacco', as used in this part, means that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, and the term 'filler tobacco' means all other leaf tobacco."

This definition, as is apparent, merely describes the appearance of leaf tobacco which may be used to form the outer layer (wrapping) of a cigar. It does not specify the varieties or types of tobacco to be used as wrapper. In fact, U.S. Department of Agriculture grade standards list wrapper quality grades for several classes and types of tobacco grown in the United States.

Question. Does any law or regulation control how "wrapper" tobacco is used once it is imported into this country?

Answer. No. The U.S. Customs Service opens and examines each consignment of tobacco declared to be wrapper only for the purpose of determining and assessing import duty. Once duty has been assessed, Customs has no further control or interest as to disposition of the tobacco.

Question. What assurance can we have that tobacco brought in as "wrapper" is not subsequently diverted to other purposes, including cigarette manufacturing, thus displacing tobacco grown by American farmers?

Answer. As indicated above. there is no legal or regulatory control over end-use of tobacco imported as wrapper. However, this type of tobacco—that is tobacco suitable for wrapping cigars—has a very high value compared with tobacco normally used as filler in cigars and cigarettes. For example, imports of tobacco declared as wrapper in 1979 had an average value of $4.87 per pound. Imported cigar filler in 1979 was valued at $1.78 per pound, stemmed, and $1.27 per pound, unstemmed. The average value of imported cigarette leaf ranged from 68 cents to $1.39 per pound, depending on type. In view of this considerable difference in values, it would appear unlikely that a manufacturer would use as filler, high value tobacco determined by Customs to be suitable for use as wrapper.

Question. Because of misclassification by the Customs Service, so-called "scrap" tobacco imports have increased from 11.8 million pounds in 1955 to 119 million pounds in 1978. According to the General Accounting Office, these incorrectly labeled "scrap" imports have displaced American produced tobacco and have deprived the government of $188 million import duties over the past 10 years. Should not this give us pause to opening a potential new loophole for tobacco imports.

Answer. It is not clear that the Customs classification of tobacco declared as "scrap" has had a great deal to do with the volume of imports during the past 10 years. Tobacco available on the world market—whether dutiable as stemmed leaf, unstemmed leaf or "scrap"—has been and continues to be considerably less expensive than tobacco produced in the United States. Similarly, it is not clear that the "scrap" classification of mechanically-threshed tobacco has resulted in substantially less duty collections. It is arguable that a different classification would have merely changed the form of imports, not the volume; larger imports of unstemmed leaf (duty 12.75 cents) and smaller imports of scrap (duty 16.1 cents) may have resulted, with little effect on duty collections.

Suspension of duty for items 170.10 and 170.15 could result in some duty-free imports of filler tobacco. To mitigate this possibility, the Administration recommends that H.R. 7139 be amended to restrict duty-free imports to unstemmed wrapper tobacco only and to limit the quantity that may be imported free of duty to not more than 2 million pounds during the one-year period. The proposed changes would (1) address concerns expressed by U.S. producers of filler tobacco that suspending the duties on wrapper tobacco could permit an upsurge in filler imports—the tariff description of items 170.10 and 170.15 is "Wrapper tobacco (whether or not mixed and packed with filler tobacco)"; (2) provide cigar manufacturers an adequate supply of duty-free foreign-grown wrapper, taking into account requirements in recent years and the possibility of a disease-induced shortfall in the 1980 Connecticut crop; (3) assure that reimports of U.S.-grown wrapper under Schedule 806.2040 are not charged against the duty-free quota recommended for imports of foreign-grown wrapper—practically all imports of foreign-grown wrapper are unstemmed, falling under TSUS item 170.10, whereas reimports of U.S. wrapper under 806.2040 are stemmed.

Question. What is the normal annual domestic production of cigar wrapper tobacco? What was the actual production for the last (1979) growing season? How much of the short fall is attributed to damage caused by blue-mold? How much domestically produced cigar wrapper tobacco is used by the cigar manufacturing industry?

Answer. The attached table shows domestic production, use and average grower prices for cigar wrapper tobacco during 1978–79. The data for 1979 are still preliminary. The weights are in farm sales weight which is about 12 percent greater than packed unstemmed weight.

It is difficult to determine the loss from blue-mold to the 1979 crop. The effect of the disease was more a reduction of quality rather than quantity. It is estimated that the production of *usable* quality rather than quantity connecticut wrapper was reduced 12 to 15 percent by blue-mold in 1979.

Question. Would the manufacturers object to a strict poundage limitation which would suspend the tariff only on enough cigar wrapper tobacco to offset the domestic shortage?

Answer. We understand that the cigar manufacturers would not object to a realistic tariff quota that would offset the possible shortfall in domestic wrapper production and mitigate the anticipated price impact on foreign supplies. We believe that a quota of about 2 million pounds would be sufficient for these purposes and would be acceptable to the cigar industry.

Question. Under the multilateral trade negotiation package, the tariff on imported unstemmed wrapper tobacco was reduced from 90.9 cent per pound to 36 cent per pound and the tariff on imported stemmed wrapper tobacco was lowered from $1.58 (sic) per pound to 62 cent per pound. In view of this 60 percent reduction which went into effect only four months ago, why is it now necessary to suspend the tariff altogether?

Answer. These tariff reductions were made before the effects of blue-mold on the 1979 production of foreign and domestic wrapper were known.

Question. Doesn't the Cigar Association have a petition before the International Trade Commission seeking GSP treatment for cigar wrapper tobacco? Wouldn't a favorable ruling on that petition effectively eliminate the tariff on most wrapper imports? What is the relationship between that petition and the bill being presented today? What is the status of that petition at the ITC?

Answer. The Cigar Association petitioned the Trade Policy Staff Committee (TPSC) to make wrapper tobacco eligible for duty-free treatment under the Generalized System of Preferences (GSP). In accordance with the law, the TPSC requested the advice of the International Trade Commission (ITC) regarding the possible economic impact of granting the petition. The ITC has completed that review, and the case is now under consideration by the GSP Subcommittee of the TPSC.

A favorable ruling on the GSP petition could effectively eliminate the tariff on most wrapper imports, assuming that the necessary Form A were filed with Customs Service and that the other GSP criteria were met. The petition, however, would eliminate the duty for the duration of the GSP program subject, of course, to any later petition for removal. H.R. 7139 proposed duty elimination for one year only.

Mr. JONES. Mr. Martin.

Mr. MARTIN. In the same vein as my colleague from Georgia has pursued, there are a couple of questions I would hope the administration would address. First of all, what is the need for the legislation? Is there a need for relief for wrapper tobacco used in the manufacture of cigars, and how great is that need, and how much imported tobacco would be required? Following that, can the legislation be amended in such a way as to limit the amount imported to the amount that is needed? The reason I think this has to be addressed is that it appears that the way in which the definition of wrapper tobacco is developed in the bill, it could be imported as wrapper tobacco and then used for some other purpose, such as filler tobacco, once it has been imported. So I would hope there would be some attention given by the administration to how that limitation can be imposed. I am sure it is not the intent of the sponsor of the legislation to undermine the tobacco program of the small farmers.

Mr. COTTER. Absolutely.

Mr. CAVITT. As to your last point, Mr. Martin, it would be a highly expensive proposition for the cigar manufacturers to import wrapper and use it as filler. The differences in the cost and quality are significant.

Mr. MARTIN. That is what you say. But we do not know that would be the case once you began administering it. I understand that in recent years, scrap tobacco imports have increased from about 11 million

pounds in 1955 to 119 million pounds in 1978. I would not want to see the same kind of thing happen under a newly created loophole. I would invite the administration to examine that and see what limitations would be appropriate in that regard.

I yield.

Mr. COTTER. The type of wrapper tobacco to which I am referring is an extremely high grade, and I do not think there is that danger, but I think through definition we could define it much better.

Mr. MARTIN. There would be no objection on your part to tightening the definition or limiting the amount that would be imported?

Mr. COTTER. Right.

Mr. MARTIN. And when you would close the window, so to speak?

Mr. COTTER. Right.

Mr. CAVITT. With respect to your question about the basic need, Mr. Martin, the cigar manufacturing industry is experiencing financial difficulty due to rising costs and declining consumption. A plant disease called blue mold is reducing supplies of wrapper tobacco imported from Central America and the Caribbean. Having said that, we nevertheless are sensitive to and concerned about the possible substitution of more—if you will, the creation of a loophole whereby filler tobacco could come in under the same heading as the wrapper tobacco for whatever use. That indeed is the point of reservations the administration has in the matter which we are currently studying. Of course, we will be getting back to the committee with further information on that point.

Mr. MARTIN. Thank you. Although I appreciate the point you made earlier about the quality and price of wrapper tobacco, for practical purposes it comes down to a classification that has to be made by the Customs Service at the dock on each shipment. That is why I want to see that addressed and tightened up.

Mr. CAVITT. I agree.

Mr. JONES. Any further questions? We have one bill that was passed over on which we would like your comment, Mr. Cavitt, H.R. 7167, to amend the tariff schedule of the United States to permit entry of certain valuable wastes resulting from the processing of merchandise admitted into the United States under bond.

Mr. STEWART. My name is George Stewart from the U.S. Customs Service. We have no objection to this bill.

Mr. JONES. Let me ask a couple of questions the chairman wants on the record. The bill was introduced to help U.S. businesses along the Canadian border to process various metal articles. What other products and operations would benefit from this legislation?

Mr. STEWART. I think it would be principally metal products or products which are bulky. It would not only be along the border, it would perhaps help firms in other areas even more, say Birmingham, Ala., where the distance to export the waste is even greater.

Mr. JONES. In the case of the New York company which makes steel coils from Canadian steel bands, is not the existing drawback law available as an alternative?

Mr. STEWART. Yes; it is. It could be done under drawback at the moment, title XIX, 1313.

Mr. JONES. Why would that not be done rather than under new legislation?

Mr. STEWART.. This would be a desirable way to do it. I believe that there are several reasons firms would prefer doing it under TIB. Perhaps at the moment one of the principal reasons is under TIB the duty is not paid with high interest rates; it is perhaps more favorable to put a bond up rather than paying the duty and getting the duty back when the product is exported.

Mr. JONES. But the administration has no objection to this legislation?

Mr. STEWART. That is right.

Mr. JONES. Does any member have further questions of these witnesses. Mr. Cavitt do you have anything else you want to say?

Mr. CAVITT. Yes. We have consulted further with our colleagues in the Department of Agriculture and elsewhere with respect to the ammonia bill and have a few further thoughts for you. We note that the terms of the agreement between the sole U.S. importer and the Soviet Union with respect to anhydrous ammonia shipped to the United States calls for the amount of those imports to level off. In a rising market, the Soviet share of the U.S. market therefore is going to decline. In this regard we note that Soviet ammonia accounted for only 5 percent of total U.S. ammonia consumption in 1979. Finally, I would note that the provision of section 406 under which the USITC conducted their basic investigation indeed considered the threat of dependence on a nonmarket economy and under the provisions of 406 there is for those circumstances a lesser criterion for finding injury. They did consider those criteria and nevertheless found there was no injury or threat thereof. However, should market conditions worsen, the President could again use his emergency powers to deal with the situation.

Mr. JONES. Mr. Frenzel, do you have any further questions?

Mr. FRENZEL. Well, I do. What emergency powers does the President have to deal with the situation?

Mr. CAVITT. They are the same ones he used before, Mr. Chairman, under section 406.

Mr. FRENZEL. Under 406? But 406 is market disruption. They are not talking about dependency or extraordinary dependency that I can see. Maybe I have not read it right.

Mr. CAVITT. I do not have the language of the Trade Act here with me, Mr. Frenzel.

Mr. FRENZEL. I do. And I cannot understand it. I do not really see that dependency gets taken into account here to any considerable extent.

Mr. CAVITT. Perhaps it would be useful in this regard in light of your concern if a question were addressed to the USITC, to the extent that they took the question of dependence into consideration in the conduct of their investigations.

Mr. FRENZEL. Well, I think that would be of some help, indeed, and not to what extent they took it under consideration.

Mr. JONES. Mr. Frenzel, I think it still might be well for ITC and Agriculture to appear today, if they could.

Mr. FRENZEL. I certainly would like to hear from them, Mr. Chairman. If, as I suspect, the administration does not like my bill because it is too strong and the industry does not like it because it is too weak, it must be just right.

Mr. JONES. Would you request that they come?

Mr. FRENZEL. I would so request.

Mr. JONES. I am talking to Mr. Cavitt now, on behalf of the administration, to produce witnesses from Agriculture preferably, and possibly ITC also today. And I would like to see if it could be done right around the time we will be hearing from witnesses on the bill. I do not know when that is going to be, but somewhere around noon or so would be a good point.

Mr. CAVITT. Mr. Chairman, we have consulted with the Department of Agriculture. I am advised at the moment there is not an appropriate witness available who would be able to speak to the details concerned. Certainly in the intervening time between now and markup projected for the 21st we could deal extensively with those either orally or in written form as you wish. And certainly working with your staff we can request that the ITC present itself.

Mr. FRENZEL. Mr. Chairman, I indicated the industry wanted stronger measures, but I should have said also that there is an importer involved. The importer of course favors your position.

Mr. JONES. All right. Out of all those vast buildings, they do not have anybody who can speak to their budget today?

Mr. FRENZEL. What was their budget last year, Mr. Chairman, that they do not have anybody to speak?

Mr. JONES. What is the ratio of Department of Agriculture employees to farmers?

Mr. FRENZEL. Is it English they do not understand? What do you suppose it is?

Mr. JONES. You are being serious?

Mr. CAVITT. I am serious, Mr. Chairman. I do not know what the problems are, because I have not spoken with them directly, but I did ask a member of my staff to call Agriculture just a few minutes ago and I am advised, on whatever grounds, that that is the case.

Mr. JONES. Please inform them that before we go to markup we can either disregard what the administration position is on this or we can hear from them, but we are also looking for good new material, and your latest comment there was no one in the Department of Agriculture available to speak certainly adds to our repertoire of after-dinner jokes.

Mr. Moore.

Mr. MOORE. May I inquire at this point?

Mr. JONES. Yes.

Mr. MOORE. I am in the enviable position of my State being the largest producer of ammonia and also having a tremendous number of farmers who like ammonia at a cheap price no matter where it comes from, including the Soviet Union. We have been doing research on this and we have run across a couple of the points. On the one side the theory is the Soviets will undersell domestic producers, which we know from a state economy is quite possible, there is no way to tell their real cost of production. On the other hand we are told that those who are importing it are importing at this time at American domestic prices, the same thing it costs here. If you put the tariff on it, it is 15 percent on it, the price is greater. Those two points are directly contradictory. One of the two cannot be right. They both cannot be right. I

ask the administration what is the real price of this Soviet ammonia coming in and what is the prospective price of it coming in as compared to domestically produced ammonia?

Mr. CAVITT. As an economist I can give you an answer, Mr. Moore. Inasmuch as the imports are coming in under contract through a sole agent in a fixed quantity, there would be no incentive, no economic incentive for the Soviet Union to be exporting those goods to us, if you will, at some kind of a discounted price. Under those kinds of terms, economically they could and presumably would ship to us at the highest price they could command, which is allegedly what they are doing now.

Mr. MOORE. What is the price in that fixed contract?

Mr. CAVITT. We do not have those numbers immediately available to us, Mr. Moore. I understand that representatives of the industry are here and will be testifying later in the hearing.

Mr. JONES. You may want to withhold those questions because we will have two points of view from the importers and domestic industry testifying today.

Mr. MOORE. I just wondered what the Government thought about all this. They should have some information or opinion as to whether or not it is accurate that we can expect predatory pricing by the Soviets on ammonia or not, or whether they are going to sell it for the same thing you pay here for it.

Mr. CAVITT. No; it is not our expectation that they will or are engaging in predatory pricing. All evidence available to us indicates that is not the case.

Mr. MOORE. Their prices, if they are not predatory but competitive, will those prices be competitive with domestically produced ammonia or less than that because they have a cheaper cost of production or something like that?

Mr. CAVITT. Mr. Chairman, I have a member of my staff here with me that I would like to ask to speak to this point, Mr. Stephen Kaminski, a staff economist with the Department of Commerce who has been working on this case.

Mr. KAMINSKI. Thank you.

In the course of the 406 investigations and our conversations with the party that sells the Soviet ammonia, we understand they negotiated a fixed-price contract. It is our understanding from them that they arranged these prices in advance, they make these prices to be competitive with the domestic ammonia prices. There is also an escalator clause within their contracts which permits them to raise the price of ammonia to respond to changes in the market prices. I am sure that the representatives of the importers can speak more directly.

Mr. MOORE. I know that; we are going to get into that. But I am going to hear their side of it. I am trying to hear the Government's side of it; they should be impartial and objective. I am going to hear one side say, "Yes; it is predatory," another side will say "No." I am hearing that. I want to hear from the administration, what is your judgment in the matter, why would you buy from the Soviet Union, would be my question, to ship it over here if the two prices are both competitive, domestically produced petroleum or ammonia in Louisiana, and that produced in the Soviet Union? If the two are the same,

then it has to cost more for the Soviets to ship it all the way here: there has to be a cheaper price in the Soviet Union. My question is, Why is that? Or is that true?

Mr. KAMINSKI. The customers who purchase Soviet ammonia and the ways in which they use the ammonia make it necessary for them to arrange long-term contracts. Apparently the best way for them to have the ammonia supplied was through the Soviets, and many of these customers built facilities to receive offshore ammonia, and of course in the negotiations we found that import relief, either the quantitative restrictions or another form of import relief, would not result in these customers buying more domestic ammonia but rather finding other offshore suppliers with the same material.

Mr. MOORE. I am not sure you have answered my question.

Mr. KAMINSKI. Long-term contracts basically.

Mr. MOORE. On long-term contracts the Soviets are cheaper than the American long-term contracts?

Mr. KAMINSKI. Just the ability to get a long-term contract.

Mr. MOORE. All right. Do you have any judgment at all as to what the—let us say somebody was going to negotiate a long-term contract today with the Soviet Union, let us assume they could do the same thing with an industry in the United States, what would be the price? Would the two be roughly the same based on the world market price of ammonia, or is one going to be cheaper than the other?

Mr. KAMINSKI. One, there are a number of problems for the domestic industry supplying the customers currently purchasing Soviet ammonia. One has to take into consideration the difference in transportation. Domestic industry would have to ship by rail; there are questions as to the ability and the safety of shipping ammonia by rail. The cost comparisons so on and so forth in the agreements would be a subject of negotiation between the customer and the supplier.

Mr. MOORE. You still have not answered my question. In other words, you do not have any idea what the price would be?

Mr. KAMINSKI. No.

Mr. FRENZEL. Would you yield? I am told that spot prices now are about 130 bucks a ton and that some of the long-term contracts still in existence are about 80 bucks a ton. How do you explain the difference between the imported price of 80 bucks a ton and 130 bucks a ton spot price? One would have to say that somebody made a very bad deal and is losing money hand over fist; is that indeed the case?

Mr. CAVITT. Mr. Frenzel, we will pursue this question further with our colleagues at the Department of Agriculture, but one factor that would come into play here would be the availability of the long-term contracts. To the extent that once you get long-term contracts at a fixed price in order, you do not have to be concerned about dealing in the spot market——

Mr. FRENZEL. That is not a very good answer. The guy that made the long-term contract had to have a reason for making that contract. He had to have a cost basis to make that contract. That is what Mr. Moore has been asking about and which you guys have been ducking. He wants to know the reason for the cost differential. Everything goes up in price. If you got a long-term fixed contract, it is going to be cheaper than something you execute 3 years down the line. How are they able to

do it? That is what he asked you. You guys are sitting there chewing your lips.

Mr. KAMINSKI. When the $80 contract was negotiated, the prices of spot ammonia were much lower; in fact the negotiated prices in the contract were higher than the spot prices at the time they were negotiated. You asked about how can they do it. A lot depends upon the price of natural gas, an important component material.

Mr. FRENZEL. That is what we were trying to get you to say.

Mr. KAMINSKI. OK.

Mr. FRENZEL. Keep going.

Mr. KAMINSKI. Certain domestic producers do have access to old gas, so to speak, in quotas, where the price of the natural gas has also been fixed by contract. They would be able to produce ammonia and make a profit because their component materials are less expensive. As these old contracts expire and they have to go out and negotiate new natural gas contracts of course the price is higher, which accounts for the rise in cost for ammonia. Now you have contracts expiring, you have these fixed-price contracts, long-term contracts expiring also. When they come up for renegotiation, the price will increase. So that would explain the difference between the spot market and the contract price.

Mr. MOORE. Conceivably if a Soviet manufacturer has access to gas and has it at a cheaper price he is going to be able to make ammonia cheaper than an American manufacturer who has limited access to gas and a higher price; is that right?

Mr. KAMINSKI. That would be; yes.

Mr. MOORE. The second question would be, what is natural gas selling for today in the Soviet Union?

Mr. KAMINSKI. I do not have an answer for that.

Mr. MOORE. Does the Soviet Union export any natural gas, raw natural gas?

Mr. CAVITT. I don't have any information on that at the moment. Of course one could postulate whether there is even a price at which the energy sources are traded. I simply do not know at the moment on what kind of a cost basis they proceed in a nonmarket economy.

Mr. MOORE. That could be a real problem in determining whether or not this is predatory pricing. The gas is worth something. If the Soviets say it is worth 10 cents a thousand cubic feet, or $3.

Mr. CAVITT. This kind of situation is run into repeatedly, for example in the conduct of antidumping countervailing duty negotiations, where ultimately they essentialy have to use a constructed price.

Mr. MOORE. Let me make one other observation, that availability of natural gas has been a problem in this country, and after the 1978 Natural Gas Act we began to find additional searches and discoveries of natural gas. There are still some ammonia plants in Louisiana that are not operating at full capacity, one that I know of is still closed because of a lack of availability of gas. Have you cranked into your computations about the fairness or unfairness of this bill the fact we mey well have more natural gas available in this country than we had say 2 or 3 years ago when people began to search outside this country for sources of ammonia?

Mr. CAVITT. Well, in the first instance, Mr. Moore, the position we have taken on the bill proceeds from a different premise, as Mr. Frenzel pointed out earlier.

The different premise on which Mr. Frenzel has put forward is one we are going to have to take a look at. The fact that a bill, however, proceeds from a different premise than one we were anticipating does not necessarily result in any change in the ultimate position or the ultimate circumstances under which one makes a decision. I suppose it is not so much a question of intent in those kinds of circumstances as it is of effect, what would be the effect in the domestic market, irrespective of intent. Of course, that is where our principal concern lies.

Mr. MOORE. That is what I am trying to point out. The point is, and I would ask you to consider it, I think that your projections and most people's projections and the arguments I am being given against this bill are based upon the fact that the United States can't supply the existing market. They couldn't give a long-term contract.

I think a lot of that thinking was based upon a year or two ago when natural gas wasn't available and, indeed, this administration was saying there wasn't going to be any more, and now we are finding it is being discovered in pretty rapid succession.

It is here and it may now be available to plants to operate at full capacity, which they are not doing now, and it may be there to create additional plants. If you are figuring the impact on the industry, I think that you are inaccurate to look at the industry a year or two ago because their problem was the availability of natural gas which I am led to believe is now suddenly becoming more available due to the result of the Pricing Act that the Congress passed and the President signed in 1978, so I think we have two problems here I would like to see you address any additional information.

I have asked the chairman to hold the record open so you may give us an idea of what is the situation in the Soviet Union with natural gas as far as pricing, what your best guess is as to what they consider the value of it, and what the world price of natural gas is and, secondly, what impact will the increase of natural gas in the United States have upon the ammonia industry in the United States and does that in any way change your opinion toward any need for protection.

That is the additional information I think we need. I am trying to figure out how I would vote on that.

[The Department of Commerce subsequently supplied the following:]

INTRODUCTION

Nitrogen fertilizer consumed in the United States includes both anhydrons ammonia for direct application on cropland and upgraded nitrogen fertilizers which are manufactured using anhydrous ammonia feedstocks. Most ammonia imported from the Soviet Union is used to manufacture other nitrogen fertilizers. About 25 percent of the ammonia consumed in the United States is used for nonfertilizer products, including plastics, fibers, explosives, and livestock feed.

We have been asked to address the issue of U.S. dependence upon nitrogen imported from the Soviet Union. In the unlikely event that Soviet nitrogen imports were to be suddenly terminated, there would be dislocations in the fertilizer sector, but adjustments could be made to insure adequate domestic supplies of nitrogen. The adjustments could be a combination of short term inventory drawn down, reduction of nitrogen exports, increasing domestic production in the medium term by restarting idled ammonia plants and by seeking additional nitrogen imports from elsewhere.

Ammonia imports from the U.S.S.R. began in 1978, reaching about 305,000 short tons. In 1979, Soviet ammonia imports reached about 777,000 tons or about 5 percent of domestic nitrogen use (fertilizer and non-fertilizer). (See Table 1)

Assuming that Occidental continues marketing Soviet ammonia, quantities of imported Soviet ammonia are expected to continue increasing until they eventually reach their maximum contractual levels of 2.3 million short tons. The Occidental-Soviet long term agreement also calls for the purchase of 1.1 million tons of urea; however, Occidental has stated that it intends to sell most of the Soviet urea in foreign markets. Thus far, the targeted contract quantities have not been achieved in any year due to technical delays, logistical problems and world fertilizer market conditions. Assuming that some of these problems will persist, we have estimated ammonia and urea imports from the Soviet Union at levels below the contractual agreement through 1982. Beginning in 1983, we assume the full contractual volume of ammonia will be imported while a maximum of one-half of the Soviet urea will be shipped to the United States. Under these assumptions, nitrogen of Soviet origin would account for a maximum 13 percent of forecast U.S. nitrogen requirements in 1983 and 1984 and will decline as a share of the market thereafter.

TABLE 1.—NITROGEN IMPORTS AS A SHARE OF U.S. NITROGEN USE, CALENDAR YEARS 1979-85

[Million short tons nitrogen (N) and percent]

	1979 actual	Forecast					
		1980	1981	1982	1983	1984	1985
U.S. fertilizer use of nitrogen [1]	10.643	10.7	11.5	12.0	12.7	13.3	14.0
U.S. nonfertilizer use of nitrogen [2]	3.400	3.5	3.7	3.9	4.1	4.3	4.5
Total nitrogen use	14.043	14.2	15.2	15.9	16.8	17.6	18.5
Non-Soviet nitrogen imports [2]	1.813	1.4	1.5	1.7	2.1	2.8	3.2
Non-Soviet imports as a percent of domestic use	13	10	10	11	13	16	17
Soviet nitrogen imports [3]	.637	1.0	1.5	1.9	2.2	2.2	2.2
Soviet imports as a percent of domestic use	5	7	10	12	13	13	12

[1] USDA fertilizer year estimates
[2] W. R. Grace estimates presented in May 8, 1980, congressional testimony
[3] Forecasts for 1980-82 are USDA estimates of imported Soviet ammonia and urea. Forecasts for 1983-85 assume full contractual quantities of ammonia and ½ of the contractual volume of urea.

Soviet nitrogen's share of the U.S. market will decline because of growth in U.S. consumption from 1985 onward. Beginning in 1988, contracted quantities of Soviet imports are scheduled to decline to 1.6 million tons annually.

While it unquestionably is prudent to avoid overdependence upon foreign sources of supply for vital resources, it is difficult to define what cannotes overdependence. Since 1971 U.S. imports of nitrogen have increased steadily and are expected to exceed 2.3 million tons (N) during the current fertilizer year ending June 30. Imports of nitrogen products from the U.S.S.R. will account for less than half of total nitrogen nutrient imports this year. Material from Canada, Mexico and Trinidad-Tobago account for most of the remaining nitrogen imports. Combined imports from countries other than the Soviet Union are expected to equal or exceed Soviet nitrogen imports in most years (table 1). Only in 1982 is the Soviet share of the U.S. nitrogen market expected to exceed that of other combined importers. In that year, Soviet imports are expected to represent 12 percent of the American market while other importers are forecast to account for 11 percent. In the absence of Soviet ammonia in the U.S. market, imports would be expected to be replaced largely by other foreign suppliers (see discussion on offshore suppliers, page 5).

At the same time that U.S. nitrogen imports have been increasing, so, too, have exports, and the U.S. currently is a small net exporter of nitrogen. In 1971, the United States exported just over 1 million tons of nitrogen (N), and this fertilizer year exports are expected to reach 2.5 million. The popularity of urea and diammonium phosphate (DAP) in world trade accounts for most of the growth. This year, U.S. ammonia exports have about doubled last year's pace due, primarily, to increased import demand in Europe. About 15 percent of Europe's ammonia capacity is based upon naphtha or other petroleum based feedstocks which are more expensive than the natural gas feedstocks used in the United States. As a result, U.S. ammonia has been competitively priced in the higher priced European market this year.

Demand for U.S. ammonia, urea and DAP should remain strong for the next few years. Even with no further growth in U.S. nitrogen exports, if the current level of 2.5 million tons were maintained through the mid-1980's, U.S. nitrogen exports should continue to exceed nitrogen imports from the Soviet Union. Thus, if nitrogen imports from the Soviet Union were to be unexpectedly terminated. the United States has the option of curtailing exports to meet domestic requirements.

It appears unlikely that a permanent unexpected cessation of Soviet nitrogen imports would occur. Even following the imposition of an embargo of U.S. phosphate exports to the Soviet Union, the Soviet government has continued to honor the agreement by shipping ammonia to the United States. Following the severe winter of 1978/79, it was necessary for the Soviets to invoke force majeure and temporarily suspend ammonia shipments. However, when weather and production conditions normalized, the pace of exports was quickened in an attempt to make up the lost shipments.

The domestic anhydrous ammonia industry currently is operating facilities with about 20.6 million tons of annual capacity. There also are idled facilities some of which could be re-started in 6 to 12 months adding a maximum 2 million tons. Assuming a 90 percent industry operating rate, these facilities could produce 20.3 million tons of ammonia or about 16.7 million tons of nitrogen (N) which is adequate to meet forecast domestic requirements for all uses until 1983.

There is substantial potential for additional ammonia imports from three current suppliers, Canada, Mexico and Trinidad-Tobago where new production facilities are being built for exoprt expansion. Mexico, for example, stepped up ammonia exports to the United States at the time of the temporary slow down in Soviet ammonia deliveries during the recent longshoremen's boycott.

During the public hearings the Administration was asked to explain the difference between Soviet and domestic ammonia prices and if price considerations were a factor in domestic consumers opting for Soviet ammonia.

Soviet ammonia is marketed through Occidental Petroleum Corporation. Occidental sells ammonia through long-term forward pricing contracts at prescribed volumes. Occidental negotiates with potential customers and obtains letters of intent to purchase specific quantities of ammonia at certain prices, then, in turn, agrees on terms with the U.S.S.R. at fixed prices for specific periods of time. The initial contracts under which Occidental is presently selling Soviet ammonia are for periods up to ten years with fixed prices up through the first three years. The prices in the second and third years are subject, in most cases, to escalation clauses. Contracts negotiated in 1976–77 provided for price increases ranging from 3 to 6 percent a year. The escalation provisions were based on the then prevailing rates of inflation and forecasts of future market developments.

In its questionnaire sent to all U.S. ammonia producers, the U.S. International Trade Commission requested pricing information from U.S. producers concerning their long-term contracts to customers which purchase ammonia for use in upgrading ammonia into more complex chemicals. From the questionnaire responses. the ITC found eight long-term contracts which are comparable to Occidental's contracts in terms of the length of the contracts and the starting date of the first ammonia deliveries. The date furnished concerning these eight contracts indicate that Occidental's sales prices were at approximately the same level as the sales prices of the U.S. producers in the year that the contracts were signed. In certain cases the Occidental price was higher than that of domestic producers. In subsequent years, however, U.S. producers' contract prices were tied to cost of production or market price escalators, whereas Occidental's price was tied to a fixed escalation clause. Hence, as the market price and the cost of production increased at a greater rate than Occidental fixed escalator, Soviet ammonia prices were less than the domestic price. However, the low priced Soviet ammonia is only available to those consumers with contracts for fixed amounts. At the end of three years, Occidental and its customers renegotiate the ammonia price and future escalation clauses.

Regarding the current price comparison, we note that it is difficult to compare a contract price for ammonia with the domestic spot price. Only a small portion of total domestic ammonia production is sold on the spot market. The rest are negotiated contracts. The spot market for ammonia. like other commodity markets. is highly volatile and responsive to changes in perceived economic conditions as well as changes in supply and demand. Any purchaser may bid on the ammonia and in periods of peak demand or short supply the price increases rapidly.

While the long-term type of contract negotiated by Occidental offers price advantages to consumers, price considerations were not the sole determinant in the decision of domestic firms to purchase Soviet ammonia as indicated the ITC's initial 406 report:

"Most of the nine customers had compelling non-price reasons to choose offshore suppliers. Two California customers, faced with only one domestic producer in the region, decided to go offshore in order to secure alternative sources. Two Florida customers' needs are centered at Tampa, a port which can be economically served by offshore products. The natural source of supply of three Eastern seaboard customers is offshore ammonia. Another customer, which has closed its internal production facilities, needed a long-term contract to satisfy its outstanding commitments. The ninth customer similarly wanted a long-term contract. Public and confidential information indicate good reasons for believing that price was also not the main reason for either of these latter two customers' seeking Occidental."

The second ITC report indicates that the 10th Occidental customer also had compelling non price reasons for seeking an offshore supplier.

The current price differential between domestic and Soviet ammonia was created, in part, by market conditions which were not foreseen at the time contracts were initially entered into.

The United States ammonia industry enjoyed a boom period from 1974 through mid-1975. Demand was strong and spot prices soared to a record high of $400 per short ton. With ammonia plants running at full capacity (91 percent), profits reached unprecedented levels. Domestic producers, with full knowledge of the general magnitude of the agreement between Occidental Petroleum Corporation and the U.S.S.R., anticipated continued shortages of ammonia and individually began to construct new plants and to expand old ones.

By the middle of 1975, almost three years before the arrival of the first ton of Soviet ammonia, it became apparent to the U.S. industry that the boom would not last. Weakened demand was reflected in U.S. Gulf Coast spot prices as they fell steadily from the peak $400 per short ton (1975) to $78 a short ton during the summer of 1978. Meanwhile, those plants whose construction had begun during the 1974–1975 boom gradually came on stream. Altogether 7.6 million short tons of new capacity, representing 44 percent of the total U.S. capacity in 1974, have been added since 1974. The boom was followed by a bust of three years duration, mid-1975 to mid-1978.

Exacerbating the problems of domestic producers was the rapid increase in the cost of natural gas, the basic feedstock used in the production of ammonia. In 1978, for example, natural gas accounted for 64 percent of the cost of production. The average price of natural gas paid by U.S. ammonia producers in 1974 was $0.48 per thousand cubic feet. By 1979 this had more than tripled to $1.55.

Increasing costs, combined with overcapacity and decreasing prices, led to fierce competition in the domestic market and the closing of older, less efficient plants. It is a very instructive to examine the technology of the plants that were idled or shut down during the period. The year 1963 was a turning point in ammonia technology. New plants used centrifugal compressors instead of the older reciprocating ones; maximum annual capacity of a plant increased from less than 200,000 short tons to over 400,000, with the prospects of great savings in the costs to produce each ton of ammonia. Large, new generation plants have about half the nongas costs per ton of output than the smaller, older plants. Also, as big consumers, they are in a good position to obtain more favorable natural gas contracts. A study by the accounting firm Ernst and Ernst for the Fertilizer Institute indicates that the average cost of natural gas between 1974 and 1978 was thirty to fifty percent lower for large plants than for medium and small ones. These facts were not lost on domestic producers who have a history of undertaking large expansions in response to tight market periods, such as the one experienced in 1974. With a two-year lag between planning and completion of a new facility, the domestic industry in 1976 started to contend with new plants coming on stream after demand and prices had begun to fall. The solution was to idle or close high-cost facilities. Thirty-three of the plants which have closed since 1976 are of the older, smaller, reciprocating type using the now outmoded pre-1963 technology. Only four are centrifugal plants. None of these four is in the league of the modern giants with capacities of 340,000 short tons or more per year.

Current economic conditions in the ammonia industry have been reversed. In 1979 capacity utilization rose to 89 percent, and a full 12 points higher than in

1978. With new plants coming on stream and the closure of outmoded ones, the larger, newer, more efficient plants now account for 56 percent of total capacity. Capacity for 1980 is greater than in 1979.

The dramatic decline in profitability of domestic ammonia operation from 1976 to 1978 has reversed itself. The ratio of net operating profit to total sales rose from 1 percent in 1978 to 5 percent in 1970. Because previous data showed a net loss for the first half of 1979, we know that the second half of 1979 must have been quite profitable to pull the full year profit figure up to 5 percent.

Employment declined 10 percent in 1979 compared with that in 1978, but up slightly from the first half year of 1979. Since U.S. production increased more than one million tons to a recordbreaking 18.31 million short tons in 1979 any decline in employment in this industry reflects rising productivity, made possible by newer, more efficient facilities. Shipments reached record high levels in 1979, and inventories continued to decline through all of 1979.

Increased demand for fertilizers is expected to continue even with the Soviet grain embargo. Agriculture estimates of crop yield are unchanged by the embargo.

Members of the Ways and Means Trade Subcommittee asked about the comparative costs of ammonia production. The attached excerpt from the ITC report details domestic costs of production.

In the United States natural gas roughly accounts for about two-thirds of ammonia production costs. Soviet production facilities are similar to large U.S. facilities and natural gas use is comparable to that in the United States. Thus, gas costs are a major factor in Soviet production costs. Soviet internal wholesale prices are usually kept stable for long periods of time. The most recent date available on Soviet internal gas prices are wholesale prices for delivery to electric stations in 1976. They ranged from 11 rubles to 24 rubles per 1,000 cubic meters depending on the location of recipients (in 1976, 1 ruble was valued at $1.32). Prices for other consumers may have varied from the range cited. It is likely that these prices are still currently in effect.

Conversion: 1,000 cubic meters=35,300 cubic feet; Soviet gas price: 1,000 cubic feet, .31 to .68 rubles; U.S. $0.48 to $0.90.

However, the USITC report indicates that imported Soviet ammonia is being sold at, or near, prevailing market prices.

The question has been raised regarding Soviet exports of natural gas. We note that the USSR exports substantial and increasing amounts of gas for both Eastern Europe and Western Europe. In 1976, the last year for which published Soviet data were available, the Soviet Union exported 12.3 billion cubic meters of gas to Western Europe.

Estimated Soviet gas exports for 1979 are 21.5 billion cubic meters. For Eastern Europe the corresponding figures are, 13.4 billion cubic meters, and 26 billion cubic meters, respectively.

Soviet export prices for natural gas have been estimated on the basis of unofficial Soviet and European reporting in 1978 and have been converted at the office exchange for 1978: 1 ruble U.S. $1.47.

Italy—$50 per 1,000 cbm.; $1.42 per 1,000 cu. ft.

Finland—$67 per 1,000 cbm.; $1.90 per 1,000 cu. ft.

France—$78 per 1,000 cbm.; $2.20 per 1,000 cu. ft.

FRG—$59 per 1,000 cbm.; $1.67 per 1,000 cu. ft.

Austria—$78 per 1,000 cbm.; $2.20 per 1,000 cu. ft.

For the Eastern European countries, the range was $59 to $68 per 1,000 cbm. ($1.67 to $1.92 per 1,000 cu. ft.). In 1979, Soviet export prices for natural gas to Western Europe are estimated to be in the range of $100 per 1,000 cbm. ($2.83 per 1,000 cu. ft.).

U.S. NATURAL GAS COSTS

The production of a ton of anhydrous ammonia requires about 38,000 cubic feet af natural gas feedstock. The price of gas paid by the ammonia industry more than tripled between 1974 and 1979 from $.48/mcf to $1.55. About a third of the industry paid over $2.00/mcf in 1979. Most forecasts estimate that gas prices will at least double by 1985 as gas prices are deregulated and they are priced on an energy equivalency basis with imported petroleum products.

The fertilizer industry undoubtedly will pay at least $3 to $4/mcf by 1985 and many believe that the price will be $5 or more.

At $4/mcf the cost of gas to manufacture a ton of ammonia will exceed $150. Assuming the 1978 ratio of natural gas costs to total production costs, the cost

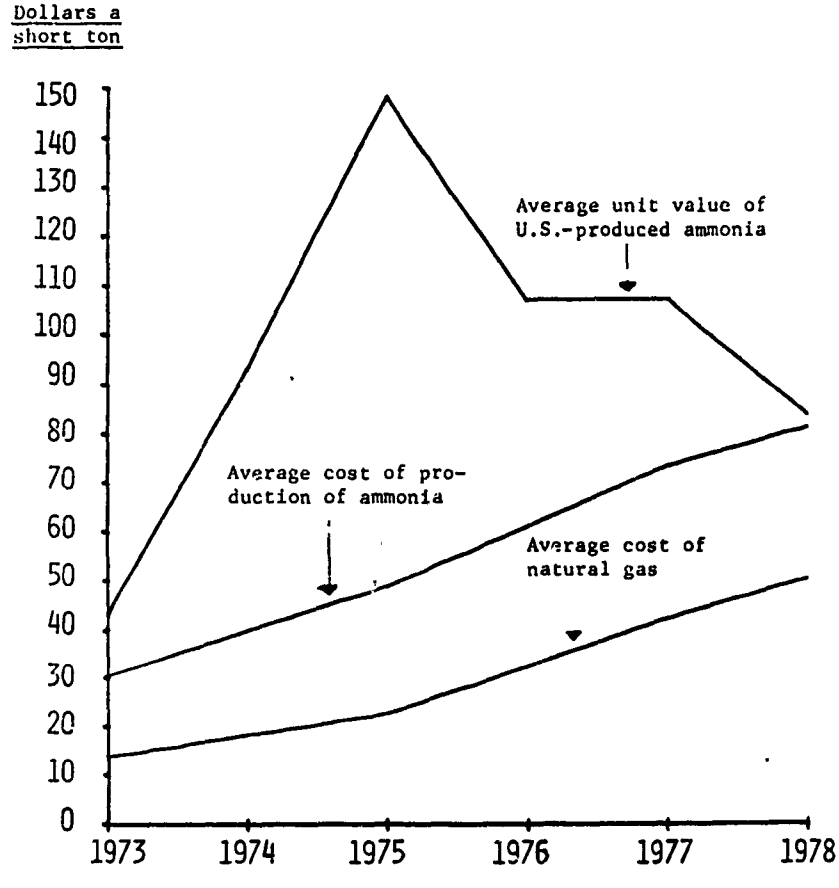
of producing ammonia would be almost $250 a ton. Prices paid by farmers might be expected to be $325 to $350 per ton under these circumstances.

COST OF PRODUCTION

In April 1979, the public accounting firm, Ernst & Ernst, completed a study for the Fertilizer Institute concerning the cost to produce ammonia in the United State during 1970–78. Thirty-four companies responded to the survey. Results indicated that the average cost to produce a ton of ammonia in the United States increased from $30 a short ton in 1973 to $81 a short ton in 1978. Natural gas, which accounts for about 64 percent of the cost of production, accounted for most of the increase in cost, rising from an average of $14 a short ton in 1973 to $50 a short ton in 1978 (fig. 8). In reviewing figures 8 and 9,* it should be noted that the data on cost of production are based on the weighted average costs of 34 firms that responded to the survey conducted by Ernst & Ernst on ammonia production costs. Thus, the costs presented are strongly influenced by the output of the large-capacity plants, which are more efficient than the small- and medium-sized plants. It should also be noted that production costs do not include sales and general administrative costs.

*Figure 9 omitted.

Figure 8.--Anhydrous ammonia: U.S. producers' average unit value of their shipments, average cost of production, and average cost of natural gas, 1973-78.



Source: The Fertilizer Institute's study, Ammonia Cost of Production, conducted by Ernst and Ernst, April 1979, and official statistics of the U.S. Department of Commerce.

According to data collected by the Commission, the average cost of natural gas to U.S. ammonia producers more than tripled from $0.48 in 1974 to $1.55 in 1979, as shown in the following tabulation:

Average cost (1,000 cu ft):	
1974	$0.48
1975	.65
1976	.94
1977	1.15
1978	1.27
1979	1.55

The increase in the price of natural gas is linked to the sharp increase in the Organization of Petroleum Exporting Countries (OPEC) oil prices. The U.S. ammonia industry, using natural gas generally purchased on long-term contracts, was somewhat insulated from the suddeness of oil price increases. Nevertheless, a gradual plant-by-plant price increase was felt as contracts expired or were renegotiated, and as newly constructed plants signed new contracts for natural gas. In 1970, according to the Ernst & Ernst study, virtually all U.S. producers purchased natural gas at prices below $0.50 for 1,000 cubic feet. By 1979, only 8 percent of the ammonia produced in the United States used natural gas priced under $0.50, while 32 percent of the natural gas used was priced over $2.00 for 1,000 cubic feet (table 21).

TABLE 21.—ANHYDROUS AMMONIA: COST OF NATURAL GAS TO U.S. AMMONIA PRODUCERS, BY PERCENT OF PRODUCTION, 1974-79[1]

[In percent]

Cost per 1,000 cubic feet	1974	1975	1976	1977	1978	1979
Less than $0.50	61	39	15	10	8	8
$0.50-$0.99	37	46	41	22	16	17
$1.00-$1.49		13	33	44	28	6
$1.50-$1.99	2	2	10	22	37	38
More than $1.99				2	11	32

[1] Data account for the following shares of U.S. production (in percent).

1974	84
1975	89
1976	92
1977	92
1978	95
1979	97

Note.—Because of rounding, figures may not add to 100 percent.

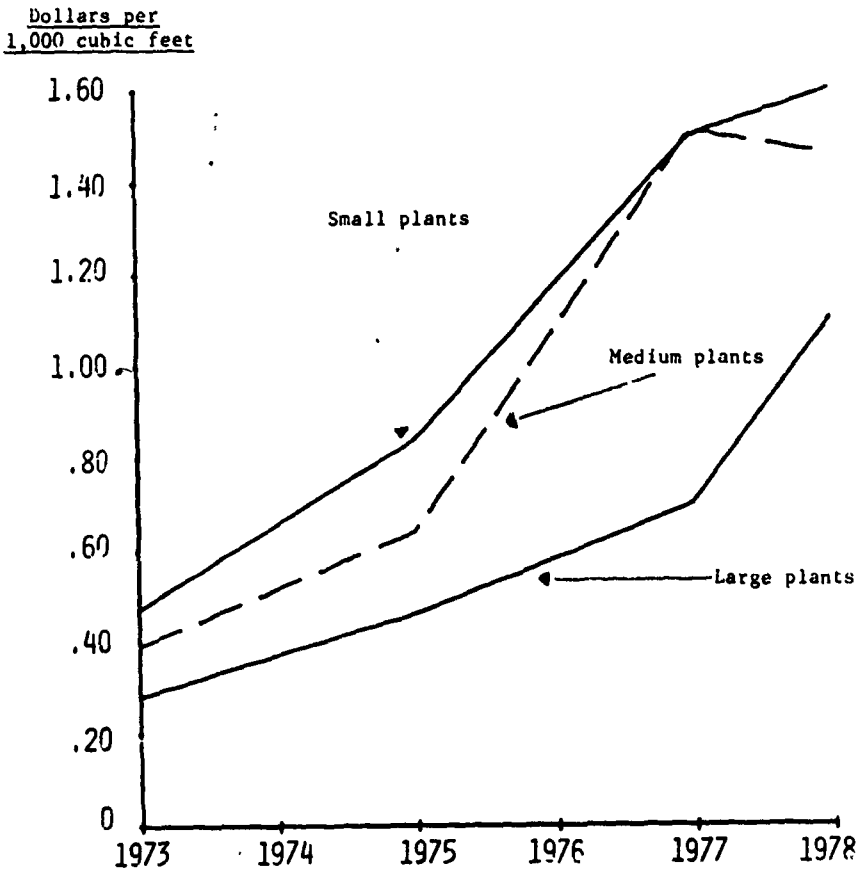
Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

This wide range of prices paid for natural gas by U.S. producers in 1979 has led to a wide disparity in the cost of producing ammonia. For example, as shown in figure 9*: in 1978 those producers using natural gas priced under $0.50 for 1,000 cubic feet had an average cost of production of $33 a short ton, while those using natural gas priced over $2.00 for 1,000 cubic feet faced average costs of $116 to produce a short ton of ammonia.

While the amount of natural gas used to produce a ton of ammonia is approximately the same for all sizes of U.S. production facilities, most of the small plants use more expensive natural gas than the large plants (fig. 10). In addition, the other costs of production, e.g., electricity, overhead, and labor, are about twice as high per ton of production for the older and smaller plant than for a large new plant (fig. 11).

*Figure 9 omitted.

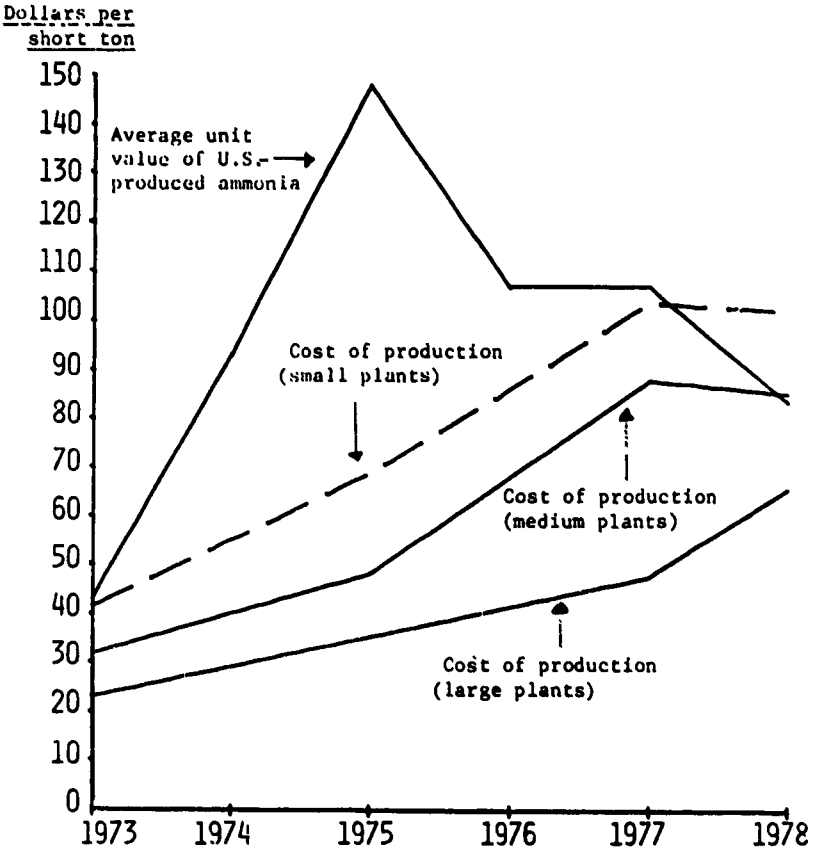
Figure 10.--Average cost of natural gas, by sizes of U.S. ammonia production facilities, 1973-78.



Source: The Fertilizer Institute's study, Ammonia Cost of Production, conducted by Ernst and Ernst, April 1979.

Note.--Large plant, capacity of more than 340,000 short tons a year; medium-size plant, capacity between 200,000 and 340,000 short tons a year; small-size plant, capacity less than 200,000 short tons a year.

Figure 11.--Anhydrous ammonia: U.S. producers' average unit value of their shipments and average cost of production, by plant sizes, 1973-78.



Source: The Fertilizer Institute's study, Ammonia Cost of Production, conducted by Ernst and Ernst, April 1979, and official statistics of the U.S. Department of Commerce.

Note.--Large plant, capacity of more than 340,000 short ton a year; medium plant, capacity between 200,000 and 340,000 short tons a year; small plant, capacity less than 200,000 short tons a year.

In 1978, SRI International published a study, "Ammonia Production Cost Trends," which forecasts U.S. and Canadian ammonia production costs through 1984. The SRI forecasts were made on the assumption that all plants operating in 1977 and those that began operating after 1977 would be operating in 1984. Thus, the average production costs predicted by SRI includes those high-cost plants which have already shut down in 1978 and 1979. According to SRI projections, the average cost of production will increase from $77 a short ton in 1977 to $119 a short ton in 1981 assuming that all plants are operating at 100-percent capacity. The average cost of production in 1981, as shown in table 22, would be $124 and 130 a short ton if the plants are operated at 85 percent and 70 percent of capacity, respectively.

At the public hearing in investigation No. TA 406-5, testimony was presented indicating that SRI's cost projections, which were completed in the fall of 1978, did not take into account the Government's policy to decontrol U.S. crude oil and the recent crude oil price increases announced by OPEC. Thus, it is likely that natural gas prices and the average cost of ammonia production will be higher than SRI's projections.

TABLE 22.—ANHYDROUS AMMONIA: UNITED STATES AND CANADIAN WEIGHTED AVERAGE TOTAL PRODUCTION COSTS,[1] BY VARYING RATES OF CAPACITY UTILIZATION, 1977, 1978, AND 1981

[Per short ton]

Capacity utilization	1977	1978	1981
100 percent	$77	$86	$119
85 percent	79	90	124
70 percent	84	94	130

[1] At plant gate, excluding return on investment, and assuming a 6-percent annual inflation rate, and no plant closures 1978-81.

Note: Current dollars.

Source: Copyright permission granted by SRI International, Ammonia Production Cost Trends, 1978 edition.

Mr. JONES. We have asked the Department of Agriculture to come back when they can find someone to speak and I think perhaps you and your colleagues ought to come back and address these questions from the different premise and different questions that have been raised today.

Mr. CAVITT. Yes, Mr. Chairman, be glad to.

Mr. JONES. I want the record to show with regard to the ammonia legislation, H.R. 7087, we have requested that the U.S. Department of Agriculture and ITC respond in writing to questions of members by noon Wednesday, May 14, which is next Wednesday, and appear as witnesses for further questioning at the subcommittee's May 21 mark-up meeting.

Mr. MOORE. It might also be advisable to include the Department of Energy in that. They may be the only ones that have this information about natural gas availability and pricing here and in the Soviet Union and that seems to be the real crux or that is the major ingredient for ammonia. There are questions I don't think will be able to be answered by anybody but them.

Mr. JONES. I think that is a good suggestion and we will so instruct the staff to invite the Department of Energy.

Thank you.

[Whereupon, the subcommittee received testimony on the generalized system of preferences.]

Mr. FRENZEL. The subcommittee will now attempt to make a small change in the schedule. Due to some emergency conditions Mr. Pickle would like to advance H.R. 7054 on the schedule. That means that our colleague, Mr. Won Pat, who has waited so patiently, and many

others—Tony, can you wait? We do have an emergency situation. There will be one more witness before you.

In that case, Mr. Pickle, would you like to introduce the witnesses on H.R. 7054?

Mr. PICKLE. Thank you very much, Mr. Chairman. I thank my colleagues for allowing me to proceed.

I have a constituent who must catch a plane this afternoon and he is accompanied by two persons. They have just a one-page statement and it will not take long.

With the indulgence of the other members, I would like to ask Mr. Nalle of Austin, Tex., to come to the table and, if you would like to have anyone else at the table with you, that is fine.

Mr. Chairman, this is Tom Marquoit, president of the Plastic Net Corp., of Buffalo, N.Y.

The other is Mr. M. Axelrod, president of the Maynard Plastics Co., of Salem, Mass.

Mr. Nalle, if you will have a seat.

Mr. FRENZEL. Your statement will be made a part of the record.

You may proceed, Mr. Nalle, in any way you choose.

Mr. PICKLE. Mr. Nalle is president of the Nalle Plastic Co. of Austin, Tex., and a constituent. He is a free enterprise businessman in the truest sense of the word, and I have introduced a bill in an attempt to help his company and similar companies that would amend the tariff with respect to plastic netting.

Mr. Nalle has a one-page statement and I want him to present his statement and then to demonstrate, if he wants to, in the short time possible in order to cover the schedule.

Mr. Nalle, are you ready to proceed?

STATEMENT OF GEORGE NALLE, JR., PRESIDENT, NALLE PLASTICS, AUSTIN, TEX., ACCOMPANIED BY TOM MARQUOIT, PRESIDENT, PLASTIC NET CORP., BUFFALO, N.Y.; AND MAYNARD AXELROD, PRESIDENT, MAYNARD PLASTICS, SALEM, MASS.

Mr. NALLE. Mr. Chairman, Mr. Pickle, my own beloved Congressman, I want to thank you for your great kindness in setting this up for us. Your introduction is a little different from what I had expected because when I came up here you told me to keep it clean, be good, be careful, and don't get mad at anybody. I am not mad at anybody.

But, I would like for each member of the committee to have a set of samples of this net so we know precisely what we are talking about, and I would like for each staff member here present to also have a sample.

The green net or the various colord nets are shelf liners which can be used on the tables or in your restaurant for the purpose of letting glasses dry and to prevent noise. This tubular piece of net which is included in the package is tree guard. It is used to protect young trees in the forests for reforestation. It protects those trees against beavers, rabbits, pocket gophers, and deer browsing, which kill the trees. This is an ecological means of saving the lives of thousands of young trees.

This particular piece of net is what we call automotive net. It is used to keep rattles out of the doors, between the door handle and the lock of a car door.

The little bag in each of these packages contains the raw material from which our netting is made.

Every time a foreign country ships net into the United States, they pay 6 percent duty and sometimes 8½ percent duty, depending on the views of the custom's inspectors. The Tariff Code gives no description of plastic net because no such product existed when the Tariff Code was written. My U.S. patents on net were all issued after 1960. The 6-percent duty applies to filmstrips, filaments, and sheets, and the 8½-percent duty applies to artificial flowers, trees, foliage, fruits, vegetables, grasses, or grains wholly or almost wholly of plastic.

Gentlemen, there is just no classification in the code for extruded plastic netting.

Please note that this net is not a woven product.

Now, on the other hand, the plastic raw material from which this net is made, when shipped into our country, commands a duty of 10 percent plus 1.3 cents per pound surcharge, which figures to a simple duty of about 17 percent. It seems to me to be unfair, inequitable, and unjust, if I have found it so, in my business, to let foreign countries ship finished net into the United States at a much lower duty rate than the raw plastic from which it is made.

Contrast this with what foreign countries do to us when we ship our netting into the Common Market or Europe or any of the others, for the most part. They charge us 30 percent duty, some of which is called value-added tax. In Europe last October, I was told that this value-added tax is refunded on all exports made to the United States. This subsidizes our foreign competition. Furthermore, many foreign countries, particularly the European countries, subsidize their freight which is already cheaper than our U.S. freight.

In short, most of the foreign countries protect their own manufacturers and laborers, but the U.S. Government has thus far not offered us equivalent protection or anything like the protection which foreign governments have offered to their manufacturers.

This is detrimental to our labor, our manufacturers, and our country.

I am not the only one suffering. Just look at the effects of present policies on our disastrous balance of trade. We feel that we can compete favorably with foreign manufacturers and labor but we cannot compete with them when they are subsidized by their governments and we are not protected by ours.

If I leave you with but one thought, it is this: It seems grossly unfair that the raw material from which our net is made is taxed at a much higher rate than the finished product. We need at least as much duty on the finished net as is put on the raw plastic.

It is obvious that the duty on the raw plastic should be reduced or that the duty on the finished net should be increased. Either way would give the small manufacturers protection, and give our workers the protection which I believe they need and deserve.

I wanted to thank you for your time, kindness, and consideration. If there are any questions, I will be happy to answer them.

[The prepared statement follows:]

STATEMENT OF GEORGE S. NALLE, JR., AUSTIN, TEX.

My name is George S. Nalle, Jr. I reside in Austin, Texas. My business address is 203 Colorado Street, Austin, Texas.

I am President of Nalle Plastics, Inc., which I founded in 1946 upon my release

from the U.S. Air Force. We are a small business engaged primarily in the manufacture of plastic net.

This net is made in a wide variety of meshes, thicknesses, and from various plastic materials to fit a number of end uses; such as, tree guards, produce bags, shelf liner, fencing, shaft protectors, case liner, mop handles, chemical support frames, oil and water separators, water desalting units, dialysis filters, bird netting, swimming pool covers, automotive nets, candle globe covers, etc.

Every time a foreign country ships net into the U.S., they pay 6 percent duty and sometimes 8½ percent duty depending on the views of the customs inspector. The tariff code gives no description of plastic net because no such product existed when the code was written. My U.S. patents on net were all issued after 1960 (Nos. 3,067,084; 3,118,180; 3,816,959; 3,394,431; 3,782,872; 3,884,753; 8,844,874; 3,620,833; 3,560,306; 3,819,451; 3,012,275; 3,127,398; 3,756,300; 3,019,147; 3,616,080; 3,382,122; and 3,429,004). The 6 percent duty applies to film, strips, filaments, or sheets and the 8½ percent applies to artificial flowers, trees, foliage, fruits, vegetables, grasses, or grains wholly or almost wholly of plastic. There is no classification for extruded plastic netting.

On the other hand, the plastic raw material from which net is made, when shipped into our country, commands a duty of 10 percent plus 1.3 cents per pound surcharge which figures to a simple duty of about 17 percent (depending on the price of the plastic).

It seems to me to be unfair, inequable, and unjust and I have found it so in my business; to let foreign countries ship finished net into the U.S. at a much lower duty than the raw plastic material from which it is made.

Contrast this with what foreign countries do when we try to ship plastic netting to them. They charge us 30 percent duty some of which is called value added tax. In Europe, last October, I was told that this value added tax is refunded on all exports made to the U.S. This subsidizes our foreign competition.

Furthermore, many countries subsidize export freight which is already cheaper than our own. In short, most of the foreign countries protect their own manufacturers and laborers, but the U.S. government has thus far not offered us equivalent protection. This is detrimental to our labor, our manufacturers, and our manufacturers, and our country. I am not the only one suffering, just look at the disastrous effect that present policies have had on our balance of trade.

We feel that we can compete favorably with foreign manufacturers and labor, but we can not compete with them when they are subsidized by their governments and we are not protected by ours.

We need, at least, as much duty on finished net as is put on the raw plastic from which it is made.

It is obvious that the duty on the raw plastic should be reduced or the duty on the finished net increased.

Mr. FRENZEL. Thank you for your brevity. We have a vote coming up shortly.

Mr. PICKLE. If the two gentlemen wish to make a statement or insert it for the record, that will be permitted.

I have talked to some of the colleagues on the committee and may I say one word. The gentlemen in the administration have said to this committee, Mr. Nalle can get administrative relief, but have said to you that you can't get it because the code is not written that way.

They said this morning all you have to do is go down to the administrative agency and they can work it, but they have already told Mr. Nalle no. We are now taking this route because this is important. What Mr. Nalle says makes a great deal of sense, and I hope the committee will consider this.

Mr. NALLE. I have spent nearly 3 years trying to get the staff to go along with us because they could just as well interpret this as a type of cloth or material to make the classification of sheets, strips, and tubes, but they simply will not do it. I cannot understand why they want to favor foreigners over the American people.

Mr. FRENZEL. Thank you very much for your time.

The subcommittee will recess for 10 minutes, and thank you very much.

[A recess was taken.]

Mr. FRENZEL. The subcommittee will come to order.

We will now hear from Mr. Nalle.

Mr. NALLE. Mr. Chairman, could we impose upon you for about 2 seconds for Mr. Maynard Axelrod of Maynard Plastics in Salem, Mass., to make a short statement?

Mr. AXELROD. I would like to add that we, on the east coast, have been particularly hurt by material coming into this country from Europe. There is an excess of netmaking capacity in Europe. Because of that excessive production, we have been losing market shares to European producers.

Mr. FRENZEL. Thank you.

Do we need to hear from New York State?

Mr. MARQUOIT. I think it has been very well said and we would not take up any more of your time.

Mr. FRENZEL. We are very impressed with this Sunbelt/Snowbelt alliance. Thank you very much.

Mr. NALLE. Thank you very much, and I would like to extend to you and your committee a most cordial welcome to visit us in Texas.

Mr. FRENZEL. Tony, will you please come forward and be heard on H.R. 7063, your bill. Your statement will be accepted for the record and you may proceed as you wish.

STATEMENT OF HON. ANTONIO B. WON PAT, A DELEGATE IN CONGRESS FROM THE TERRITORY OF GUAM

Mr. WON PAT. As you know, my bill is very simple and my statement will be very simple and very brief.

With your permission, I would just like to read it.

Mr. FRENZEL. Proceed.

Mr. Chairman, I thank you for scheduling a hearing on my bill, H.R. 7063, so soon after its introduction and for allowing me to appear today on its behalf.

H.R. 7063 would amend section 498(a)(1) of the Tariff Act of 1930 to increase from $250 to $600 the informal entry limit for items imported into the United States. Guam is outside the U.S. Customs Zone; therefore island businesses are affected by this informal entry limitation. One recent example involved American-made records brought to Guam by an island retailer for sale to the public. Under the contract with the mainland distributor, the Guam business could return all unsold discs. But the $250 per shipment informal entry limit made the return process unreasonably lengthy for over $40,000 worth of records that were not sold.

Other Guam businesses utilizing American-made and foreign-made equipment—but all purchased from American distributors in the United States—encounter similar problems. The local cable-TV station frequently has difficulty bringing its equipment from Guam to other places in the United States in the course of its regular business operation.

This is equipment which has not been altered on Guam—only brought to the island for routine business operations which sometimes involve travel with the equipment to other parts of the United States.

While not the total solution to these problems, I think increasing the informal entry limit to $600 would be a good start. The current

figure of $250 is very low and outdated. Records and business equipment of all sorts have increased in cost substantially. Senator Spark Matsunaga of Hawaii, recognizing this fact, has introduced a similar bill in the Senate.

I know, however, that this subcommittee recently held a markup on H.R. 5452, Congressman J. William Stanton's bill, and incorporated its provisions into a larger, omnibus tariff bill, H.R. 5047. Section 201 of that bill would now allow informal entry of U.S. products in shipments valued at not more than $10,000.

The American items imported must be coming to the United States for repair or alteration before reexportation or "after having been either rejected or returned by the foreign purchaser . . . for credit." Again, because Guam is outside the U.S. Customs Zone, it appears this provision would apply to at least the record-selling instance I just mentioned. I certainly want to add my support for the Stanton provision.

I think there is still need for my bill because of inflation since the current $250 limit was first established. When an informal entry provision was originally included in the 1978 Customs Simplification Act, the Census Bureau and the Customs Service were able to develop procedures to obtain full commodity details for shipments valued at up to $600. I have already contacted census officials who informed me they believe the Bureau could again work with Customs to reach a similar agreement. A copy of a Census Bureau letter on this subject is attached to this statement. I would think this would provide sufficient protection against unauthorized entry of foreign goods under an increased informal entry limit.

I should also point out that one prime result of Guam's being a permanent American territory, but outside the U.S. customs zone is the absence of any U.S. customs personnel on the island. The closest full-time customs presence is several thousand miles away in Hawaii. At times, a given problem might be caused by a restrictive Federal law which would take lengthy work to correct. But at other times, the difficulty could have a simpler basis, such as lack of proper customs forms, no authoritative individual to consult quickly, or some similar administrative hindrances. As I have told this subcommittee before, Guam's economy must not be allowed to suffer because of the territory's unique customs status.

I hope to work further with this subcommittee and the Customs Service to better define Guam's customs position. Thank you again, Mr. Chairman, for the prompt consideration accorded my legislation.

[An attachment to the prepared statement follows:]

DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS,
Washington, D.C., March 26, 1980.

Hon. ANTONIO B. WON PAT,
House of Representatives,
Washington, D.C.

DEAR MR. WON PAT: This is in reply to your letter of March 7, 1980, concerning Ms. Kallek's testimony in 1977 on a proposal to raise the import informal entry limit from $250 to $600 per shipment.

When the proposal to raise the value limit of informal entries was last considered, Customs had worked out procedures for reporting to Census full commodity detail for the $250 to $600 shipments. These procedures made it possible for Census to continue the programs under which it supplied data on

shipments valued over $250 for use by other agencies of government. While these arrangements were compatible with our processing procedures, we have not held further discussions on this subject since the proposal was dropped from the legislation.

However, assuming that similar procedures could be worked out with Customs for statistical reporting of imports on shipments valued $250 to $600, the compilation of the foreign trade statistics would not be hampered by an increase in the informal value limit to $600.

We would be pleased to receive more background information on the adverse effect current informal procedures have on businesses of Guam.

Sincerely,

VINCENT P. BARABBA,
Director, Bureau of the Census.

Mr. FRENZEL. Thank you, Tony. You will remember several years ago when Mr. Jones and I had our Custom Procedural Reform Act, we tried to do what you are doing here. For documentation and information purposes we had to drop that portion from the bill. The administration testified this morning that they still have those same objections to it, but they were going to devote some greater energies and resources to looking for a way to get around that problem or to satisfy the recordkeeping and detailing problems in a different way. I hope we will be able to do that.

Mr. WON PAT. I can understand that as an administrative problem. With the value from $250 to $600, if an item is $250, I don't think it would take any more work if it cost $600.

Mr. FRENZEL. That was exactly my position a couple of years ago.

Thank you very much for your testimony.

Mr. JONES. Tony, I am sorry I missed your testimony but what Bill Frenzel says, we did agree--and I am sure we still do—on this point. I am sorry I missed your testimony.

Our next witnesses will testify on H.R. 7087 for the Domestic Nitrogen Producers' Ad Hoc Committee, Mr. Jaquier.

Please identify yourself for the court reporter and proceed with your testimony.

STATEMENT OF L. L. JAQUIER, EXECUTIVE VICE PRESIDENT, W. R. GRACE & CO., ACCOMPANIED BY RONALD R. JOHNSON, EXECUTIVE VICE PRESIDENT, AGRICO CHEMICAL CO.; EUGENE B. GRAVES, VICE PRESIDENT, PLANNING AND ECONOMICS, AGRICO CHEMICAL CO.; LOY A. EVERETT, DIRECTOR OF AMMONIA MARKETING, INTERNATIONAL MINERALS & CHEMICALS CORP.; AND AL D. LAEHDER, VICE PRESIDENT, RESEARCH AND PLANNING, AGRICULTURAL CHEMICALS GROUP, W. R. GRACE & CO.; ALL ON BEHALF OF THE AD HOC COMMITTEE OF DOMESTIC NITROGEN PRODUCERS

Mr. JAQUIER. Mr. Chairman and members of the committee, I am L. L. Jaquier, executive vice president of W. R. Grace & Co., and its agricultural chemicals group executive. I am also chairman of the Ad Hoc Committee of Domestic Nitrogen Producers.

On my right is Ron Johnson, executive vice president of Agrico Chemical Co., Gene Graves, vice president of planning and economics, Agrico Chemical Co. Also with me is Loy A. Everett, sitting here on

the corner. Mr. Everett is director of ammonia marketing, International Minerals & Chemicals Corp. On my left is Al Laehder, vice president of research and planning for W. R. Grace's Agricultural Chemicals Group.

Mr. JONES. I want to welcome all of you but I particularly want to welcome from my constituency the representatives from Agrico, Mr. Johnson and Mr. Graves.

Mr. JAQUIER. We are appearing individually for our respective companies and for the Domestic Nitrogen Producers' Ad Hoc Committee, made up of 12 producers and 1 distributor of anhydrous ammonia. We accounted for 48 percent of U.S. production of anhydrous ammonia in 1979.

We appreciate the opportunity to testify on H.R. 7087.

Mr. Frenzel, with your permission, I would like to set the record straight. This is not a bill sponsored by the ad hoc committee in spite of the inference by representatives of the administration this morning. We appear here today because we wholeheartedly endorse the objective of this legislation. That is to prevent imprudent, undue dependence on Soviet imports of anhydrous ammonia. We have submitted a lengthy written statement. We will try to summarize it. We will request it be made a part of the record.

Mr. JONES. Your entire statement will be made a part of the record.

Mr. JAQUIER. Anhydrous ammonia and its related products are a very vital and strategic product in the United States. About one-third of all the agricultural production in this country is dependent upon the use of fertilizer. If fertilizer supplies to U.S. agriculture are interrupted, then the cost of food production and the impact on the domestic economy—I hate to use the word too strongly—but I really think it would be catastrophic.

The Soviet Union under the present arrangement through its agent, Occidental, will get 10 to 12 percent of the U.S. market. This is a fact that I do not think there is any dispute about.

If the Soviet Union had 50 percent of the U.S. agricultural and nitrogen market, I do not think there is any question this committee and every Member of this Congress would think that that was too much. So really, the question is: How much is too much? I would point out to you that ammonia is a commodity. It is produced in very large plants. It is very capital-intensive. It is a very energy-intensive product. About 70 percent of the cost of making anhydrous ammonia is the cost of natural gas.

Our plants cannot be closed down and restarted on a weekly or daily or hourly basis. They must operate 24 hours a day, 7 days a week.

Presently, the U.S. ammonia industry has over 3 million tons of capacity shutdown. We are, in that sense, in an oversupply position. Our position is that 2.3 million tons of this capacity could be started up again if the market conditions warranted such a startup.

Ammonia plants and other chemical processing plants deteriorate with time. If the market is not improved, these shutdown plants will either be written off by their owners, scrapped, or allowed to deteriorate to such a condition that they cannot be returned to full production.

In a commodity market such as ammonia, 10 to 12 percent of the market is a very large market share, particularly when it is an unstable supply such as is represented by the Soviet ammonia.

Right now the U.S. industry has the capability of replacing that supply if deliveries were interrupted. Three or four years out when the level of imports from the Soviet Union reach 2.5 million tons, the U.S. industry may not have this capability.

I have one other point to make.

While we say that the Soviets are going to capture 10 to 12 percent of the U.S. market, we are talking about the total ammonia market. We believe that they will capture nearly 15 percent of the agricultural nitrogen market.

Now, if our agricultural nitrogen market is interrupted at some future date and 10 to 15 percent of the requirements are not available to American farmers, you are going to destroy about 5 percent of our total agricultural production.

Let me give you some idea what that is like just on the corn crop alone, which is the leading consumer of fertilizer. In the last several years we have grown over 7 billion bushels of corn. An interruption in future years of Soviet ammonia, which could not be made up by domestic producers, would reduce that production by about 10 million metric tons, somewhere around 350 to 450 million bushels. In our judgment, this should be a matter of considerable importance to the Congress and it is certainly a matter of considerable importance to U.S. agriculture.

I would like to return to the question of how much is too much. Certainly, 50 percent dominance of the U.S. market by the Soviets would be too much. I think the question before you today is, is 10 to 15 percent dependence too much?

In our judgment, the committee and the Congress must decide this very vital question. We believe that it is imprudent to become overdependent on a very unreliable, unfriendly country, and to place our farmers' requirements for fertilizer in the hands of the Soviet Union.

We may differ somewhat with Mr. Frenzel on what may be the best solution. His bill calls for a tariff. The Soviets have already demonstrated in the past 2 years they are willing to sell ammonia in the United States at almost any price to achieve their goals of volume. Some of their early pricing, I think, resulted in a gas net back to their producing plants in Russia of zero or perhaps negative value, this at a time when we are paying $4.47 per million Btu to the Canadians and $4.47 to the Mexicans. It takes about 38 million Btu's of natural gas to produce a ton of ammonia. When you have that price, you do not have to be much of a math expert to see you are at $170 a ton for raw material alone.

There have been allegations made—and I am sure you will have more testimony—if Soviet imports were curtailed, it would be inflationary. The price of ammonia in the United States has to increase. It is going to increase as the cost of energy increases, and I think there is no argument the price of energy is going to go up in this country.

I think the best safeguard for the U.S. farmer is a viable U.S. ammonia industry. If at some future date our farmers are dependent on 2.5 million tons from the Soviet Union for their fertilizer consumption and that supply was interrupted, then our economists have calculated that the minimum impact within 2 years on the U.S. economic system would be an inflation of $5.5 billion.

Now, we are delighted to have the opportunity to appear before you. I and my colleagues will answer any questions that you may have.

[The prepared statement follows:]

STATEMENT OF L. L. JAQUIER, EXECUTIVE VICE PRESIDENT, W. R. GRACE & CO., ON BEHALF OF DOMESTIC NITROGEN PRODUCERS, AD HOC COMMITTEE

I am L. L. Jaquier, Executive Vice President of W. R. Grace & Co. and Agricultural Chemicals Group Executive. With me today are Mr. R. R. Johnson, Executive Vice President, Agrico Chemical Company and Mr. E. B. Graves, Vice President of Planning and Economics, Agrico Chemical Company. Also with me on the panel are Mr. Loy A. Everett, Director of Ammonia Marketing, International Minerals and Chemicals Corporation and Mr. A. D. Laehder, Vice President of Research and Planning, Agricultural Chemicals Group, W. R. Grace & Co. We are appearing individually for our respective companies and on behalf of the Domestic Nitrogen Producers' Ad Hoc Committee. The Ad Hoc Committee is made up of twelve producers and one distributor of anhydrous ammonia and nitrogen fertilizers. These producers accounted for 48 percent of U.S. production in 1979.[1]

We appreciate this opportunity to testify on H.R. 7087, a bill to impose tariffs of 15 percent on imports of anhydrous ammonia from the Soviet Union. We want to state at the outset that we wholeheartedly endorse the objective of this legislation to limit imports of anhydrous ammonia from the Soviet Union to current levels in order to prevent undue and imprudent dependence on the Soviets for a vital material.

We have concluded, however, that the most effective way to accomplish that objective is to hold Soviet imports to reduced levels through imposition of quotas for at least five years. Our testimony outlines our basis for this conclusion.

THE RISK OF OVERDEPENDENCE ON SOVIET AMMONIA

As the Committee is well aware, the ability of U.S. farmers to produce vast amounts of food is one of the great strengths of our economy and export trade. This capability is due to U.S. technology, investment in land and equipment, and development of new strains of grains and animals. What the Committee may not realize is that about one-third of our total food production results from the application of fertilizer.

About half of all fertilizer used in the United States is nitrogen based. Virtually all chemical nitrogen comes from ammonia. Nitrogen fertilizers must be applied every season to produce the high grain yiel s in this country, and without enough nitrogen the other fertilizers—phosphates and potash—would be ineffective. There is no question that ammonia is a vital material to the U.S. economy.

The Soviet Union will capture approximately 11 percent of the total U.S. consumption of ammonia in 1982. As a result of the U.S.S.R.-Occidental Petroleum agreements, Soviet ammonia imports beginning in 1978 totaled 315,000 short tons. In 1979, Soviet ammonia sales in the U.S. more than doubled to 777,000 short tons, or 4 percent of the market. Occidental has announced they will purchase and resell 1.5 million short tons of ammonia in 1980—that is 8 percent—and 2.0–2.3 million tons in 1981, which would amount to 10 percent of the U.S. market. In 1982–1987, the agreements call for Occidental to purchase and resell 2.3 to 2.75 million short tons of ammonia, which will amount to 11 to 12 percent of total U.S. consumption.

Since three-fourths of the market for ammonia is as fertilizer; and because much of the balance of the market for industrial uses is captive—that is, the producer making industrial products uses ammonia it makes itself—most of the Soviet ammonia is used to make upgraded nitrogen fertilizers or sold for direct application as fertilizer. That will almost certainly be the case for the additional Soviet ammonia scheduled for delivery to the U.S. market through 1987.

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[1] The members of the Committee are Agrico Chemical Co., CF Industries, Inc., Center Plains Industries, Felmont Oil Corp., First Mississippi Corp., W. R. Grace & Co., International Minerals & Chemicals Corp., Mississippi Chemical Corp., Olin Corp., Terra Chemicals International, Inc., Union Oil Co. of California, Vistron Corp. and Wycon Chemical Co.

Thus, the real impact from ammonia imports from the Soviet Union, in terms of food production, will be much higher than 11 to 12 percent of total consumption. Soviet ammonia imports will account for as much as 15–18 percent of nitrogen fertilizer consumption in this country in 1982 if the Soviets carry out their stated plans to sell the pre-determined amounts spelled out in the long-term agreements with Occidental Petroleum. Occidental has made it clear that the Soviets intend to sell the agreed upon amounts in the U.S. unless the U.S. Government imposes restrictions on those imports below some level they deem acceptable.[2]

If one-third of our food production is dependent on fertilizer and 15–18 percent of the nitrogen fertilizer were suddenly or unexpectedly cut off, our food production would drop by 5–6 percent. If you think that does not sound like much, look at corn production. In the last two years, we have produced over 7 billion bushels of corn a year. A 5–6 percent drop is 350,000,000 to 420,000,000 bushels. That means at least $875 million to $1.05 billion in income to U.S. farmers. 420 million bushels of corn equals approximately 11 million tons. This compares to the recent embargo of 14 million tons of grain sales to the Soviet Union, of which 9 million tons was corn.

In the event of a cut-off of Soviet ammonia imports, we have estimated that a 10-percent reduction in fertilizer supplies would cause reduced grain yields and increased prices to U.S. consumers in the magnitude of $5.5 billion within a year or two of disruption. The ripple effect from resulting inflation would cost even more.[3] In addition to complaints from consumers, farmers would be complaining to you about skyrocketing fertilizer costs.

Depending on how soon the cut-off occurred, these effects could continue for up to three years. That assumes U.S. producers would be able to build new capacity to produce the lost ammonia, since most idled plants and present excess capacity will have been scrapped or converted to other uses by 1983. We estimate it would cost about $130 million to build a 1,200 short ton per day ammonia plant in 1982. Mexico, Canada and Trinidad might be able to make up some of the loss within one to two years, but not all of it. U.S. producers could increase production from existing plants over the period of six months to a year, but that probably would not be enough. The longer we wait, the less likely we are to be able to make up the difference. In short, if a cut-off occurred today U.S. producers could probably make up most of the difference in a matter of a few months. By 1982 that clearly will not be the case. That may already be the case in the West Coast market.[4]

This illustration demonstrates the economic impact of a cut-off, but, we submit, the threat from this magnitude of economic disruption may well limit and hinder U.S. strategic policy options toward the Soviet Union much as U.S. policy with some OPEC nations is circumscribed now. We suggest that such policy options toward the Soviets pose at least as grave a risk as does the threat from OPEC oil embargoes.

Very few people saw this risk in 1973 when Occidental entered into these agreements with the U.S.S.R. in the first blush of detente. The first public concerns over trade with the Soviets, and other Communist countries generally, were voiced by Congress when it cautioned against "overdependence" on such trade for vital materials when the Trade Act of 1974 was passed.

Now six years after passage of that law, problems have arisen with grain and fertilizer trade—the two largest components of U.S./U.S.S.R. trade—as a result of a rapid deterioration in relations between us and the Soviets. Ambassador Marshall Shulman in a speech before the International Forum of the U.S. Chamber of Commerce on Apirl 16, 1980 said that "over the next 5–10 years there will be a heightened competition in the strategic military sphere" between the two countries. He also noted that would have negative effects on trade. We cannot expect these problems to be resolved anytime soon.

THE NATURE AND FACT OF DEPENDENCE

As the Members know, the Ad Hoc Committee has been before the International Trade Commission twice in the last few months charging that the Soviet

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[2] Testimony of Dr. Armand Hammer, Chairman of Occidental Petroleum Corp., ITC Investigation TA–406–6, Mar. 3, 1980.

[3] Schnittker Associates Economic Report, ITC Investigation TA–406–5, dated Aug. 22, 1979.

[4] ITC Hearing TA–406–6, Written Statement of James Galvin at 15–16; transcript at 278, Mar. 3, 1980.

ammonia imports are causing market disruption under Section 406 of the Trade Act of 1974, with conflicting results. The Commission first found market disruption, but after a change in personnel reversed itself. The President also reversed himself in opposite fashion. On December 11, 1979, he rejected the ITC recommended quotas, but then imposed emergency quotas on January 18, 1980, when U.S. national interests toward the Soviet Union changed dramatically. Those quotas were not removed by Presidential action but were removed by operation of law following the second ITC investigation in which the ITC ruled there was no market disruption.

This series of seesaw, conflicting decisions has left U.S. trade policy regarding rapidly increasing Soviet ammonia imports confused at best. We urge this Committee and the Congress to resolve that policy by clearly limiting the increasing U.S. dependence on Soviet ammonia.

The underlying controversy over market disruption from Soviet ammonia imports is unresolved, but we will not retry the two 406 cases before the Committee or the Congress at this time. However, aside from the obvious economic interests of domestic producers, we believe that some of the information we have developed in those cases is relevant to the Committee's consideration of undue dependence and H.R. 7087.

Two of the principal reasons Congress enacted Section 406 of the Trade Act of 1974 were to provide a remedy for market disruption and to ensure that the United States would not experience imprudent dependence on a Communist country for vital raw materials. The Congressional mandate to the International Trade Commission and the President is clearly expressed in the Senate Finance Committee report as follows:

"[t]he Committee expects the Commission and the President to monitor carefully import trends and to view each case with the goal of preventing imprudent dependence on a nonmarket's economy for a vital material.

* * * * * * *

"The Committee expects that the President and the Special Trade Representative will take such action as may be necessary to prevent the United States from becoming overdependent on communist countries for materials essential to our national defense or our domestic economy.[5]

The majority in the first ITC ammonia case, TA–406–5, determined that consideration of the threat of undue dependence was a relevant factor. The majority in the second ITC ammonia case, TA–406–6, found undue dependence was not a relevant factor within the jurisdiction of the Commission under 406. Commissioner Calhoun stated, "*Thus, while from a trade policy or foreign policy perspective, it is worthy of concern that this country could be dependent upon the Soviet Union to satisfy as much as 10 percent of the domestic consumption of ammonia,* action based upon such a concern, unsupported by reference to the traditional objective factors looked to by this insititution, goes beyond this body's jurisdiction." [emphasis added][6]

It is this concern that the U.S. could become dependent on the Soviet Union for 10–12 percent of its domestic consumption of ammonia to the detriment of the U.S. economy and our national and strategic interests that is before this Committee for consideration.

We believe that we can demonstrate conclusively that the Soviets have proven they are willing and able to capture a significant share of the U.S. ammonia market. There exists one incontrovertible fact that the Soviets, with Occidental Petroleum Corporation as their agent, have captured almost 5 percent of the total U.S. consumption and an even higher percentage of the nitrogen fertilizer market in barely two years. Without regard to the causes of the problems in the domestic market over the last two years, the Soviets accomplished this feat during a period when the U.S. market was oversupplied and prices were below U.S. production costs. Furthermore, they were able to lock in their prices in this distressed market for up to three years with annual escalators of 3 to 6 percent when U.S. producers' average costs for natural gas alone were increasing 42 percent from 1977 through 1979.[7] In addition, the Soviets shipped the ammonia approximately 7,000 miles from Odessa to Eastern and Gulf ports in the U.S.

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[5] S. Rept. No. 93–1298, 93d Congress, 2d session, 210, reprinted in [1974] United States Code, Cong. & Ad. News 7342.

[6] ITC Report; TA–406–6, April 1980, p. 30.

[7] The Fertilizer Institute Production Cost Survey, Ernst and Ernst, 1979.

The cost of natural gas for feedstock and energy makes up two-thirds of U.S. ammonia production costs. At the average prices the Soviets are apparently receiving for the 600,000-700,000 tons of ammonia under contracts made in 1977 and 1978, they would be receiving a zero or even a negative value for their natural gas feedstock.[8] Even at reportedly higher prices for the new increments of Soviet ammonia sales in the U.S. scheduled for delivery starting in 1980, which we believe to be at least $145 per short ton c.i.f. U.S. port, the realized value of the Soviet's natural gas input would be about 75¢ per million BTU's. By comparison, average natural gas costs for much of U.S. production now exceeds $2 per million BTU's. OPEC oil is currently selling for around $5 per million BTU's, and No. 2 distillate is selling for about $5 per million BTU's. Within five years, those costs are expected to equal or exceed $10 per million BTU's, and natural gas costs are expected to be about $6 per million BTU's.

Finally, the Soviets were able to pre-sell and import a total of 1.1 million short tons of ammonia in 1978 and 1979 when U.S. producers were shutting down 3.2 million tons of plant capacity in those two years in the face of an increase in U.S. nitrogen fertilizer and industrial consumption of 945,000 short tons of ammonia equivalent in 1978 and 1.368 million tons in 1979.[9] If U.S. exports had not increased dramatically over this period, even more U.S. production would have had to shut down. In 1974, Dr. Armand Hammer of Occidental testified before the Senate Banking Committee that in conditions of oversupply and plant shutdowns in the U.S. market, the Soviet ammonia would have to be sold elsewhere.[10] That has not proven to be the case.

We also believe we can demonstrate conclusively to the Committee that the Soviets have every intention of exporting to the United States the pre-determined amounts of ammonia of 1.5 million short tons in 1980, 2.0–2.3 million tons in 1981, and 2.3–2.75 million tons in 1982–1987 pursuant to their agreements with Occidental unless the U.S. Government imposes restrictions on those ammonia imports.[11] U.S. farmers will be dependent on the Soviet Union for 15–18 percent of their nitrogen fertilizer requirements by the end of 1982. That result is unavoidable so long as the Soviets carry out their plans to sell such predetermined volumes without regard to the requirements in the U.S. market. That increase in the volume of Soviet imports will virtually equal every reasonable projection of demand and consumption growth in the U.S. through 1982, and possibly through 1985. Also, with respect to total demand, U.S. ammonia exports are expected to stay level or decline. There will be no growth in U.S. production for at least the next five years.[12]

The prospect of no growth in U.S. production over the next several years means that little idled capacity will be brought back into production, and older operating plants will not be kept in production as production costs increase. U.S. production is projected to drop in 1980, gradually return to 1979 levels by 1983, then stagnate at least through 1985. Imports of ammonia will fill the gap between production and consumption, and over 50 percent of those imports will be from the Soviet Union.

The dependence on Soviet ammonia will occur. U.S. producers cannot stop it. We cannot out-compete the Soviets. The Soviet-Occidental agreements are based upon and dependent upon selling pre-determined volumes of ammonia each year for 20 years from 1978–1997. Virtually all of that ammonia will be exported to the United States, unless the U.S.S.R. cuts them off or the U.S. Government restricts them. This is not speculation. These events are an economic reality. The Soviets are and will be limited only by their own objectives and production goals—their own economic and foreign policies—and the U.S. is simply not currently in a position to persuade them to follow policies more in U.S. economic interests.

Mr. Chairman, it remains for this Committee and the Congress to determine whether such a level of dependence on imported ammonia from the Soviet Union creates an undue and imprudent risk for the U.S. economy and that such a risk

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[8] Exhibit G from Testimony of Donald V. Borst, CF Industries, Inc.; ITC Investigation TA-406-5, Aug. 29, 1979.

[9] See exhibits A and B attached.

[10] Transcript of Testimony of Dr. Armand Hammer, Chairman of Occidental Petroleum Corp., U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on International Finance, Apr. 26, 1974, p. 649.

[11] Statement of Dr. Armand Hammer, ITC investigation TA-406-6, Mar. 3, 1980.

[12] Exhibit A.

is not in our national interests. If you determine that that is the case, then you must decide how much is too much. Once you decide what prudent levels are, you must decide how best to limit Soviet imports to those levels in 1980 and beyond, probably until at least 1986, when improving supply-demand conditions could encourage new ammonia plants to be built in the U.S.

BACKGROUND ON U.S. AMMONIA INDUSTRY

In 1979, 51 companies at 79 locations produced 18.1 million short tons of ammonia with a total operating design capacity of 20.56 million short tons.[13] One new 400,000 ton plant completed in 1977, but idled since then, is being opened in 1980. U.S. consumption of ammonia for fertilizer and industrial uses in 1979 was 18,623,000 short tons.[14] Imports were 2.988 million tons, and exports were 3.234 million tons. Slightly less than half of the ammonia is upgraded into other fertilizer compounds, and 25 percent is used for industrial production of explosives and blasting agents, livestock feeds, fibers, plastics, resins, and elastomers. The balance of approximately 30 percent is applied directly as nitrogen fertilizer.

Ammonia is made in the U.S. through a pressurized, catalytic process from air, natural gas and steam. Some foreign plants use naptha, oil and coal in lieu of natural gas. All of these processes are considerably more costly than using natural gas as a feedstock. Ammonia is 82 percent nitrogen and 18 percent hydrogen by weight. It must be stored and transported under pressure or refrigeration to remain in a liquid state.

There was considerable expansion of production capacity in the U.S. in the mid-60's triggered by innovations in production technology. That technology is now the standard for the industry worldwide, including the Soviet Union. The industry over-expanded with the new large plants, prices dropped and most companies reported losses in 1968–70. Demand continued to increase, however, price controls imposed in 1972 suppressed profits and little construction took place. When controls were lifted, ammonia was by then in short supply and prices rose dramatically in 1974, peaking in early 1975. This triggered new construction, most of which started coming on line in 1975–1977. Prices had been declining since 1975 and, with over-expansion, dropped further. U.S. production capacity expanded from 17.4 million short tons in 1974 to a high of 20.9 million short tons in 1978, then decreased to 20.6 million tons in 1979.[15] Approximately 3.2 million short tons of capacity has been closed or idled since 1977, of which we estimate that 2.0 million tons could be restarted, if market conditions warranted.[16]

U.S. PRODUCTION COSTS AND PRICES

In the meantime, natural gas prices started rising rapidly following the start of the phaseout of natural gas price controls with some plants experiencing 30 percent increases in 1979. About two-thirds of the direct costs of producing ammonia is the cost of the gas, and an average of 38,000 cubic feet of gas is used to produce one ton of ammonia. The average cost of U.S. production increased from $30 per ton in 1973 to $89 per ton in 1979.[17]

We currently estimate that production costs are at or above $110 per short ton for at least half of U.S. production facilities. This does not include any return on investment or administrative and selling expense.[18] The average cost of gas more than tripled from $0.48 per MCF in 1974 to $1.62 per MCF in 1979. Over 35 percent of U.S. production in 1979 had gas costs in excess of $2.00 per MCF, and the average cost of gas to ammonia producers in 1980 is estimated to exceed $2.00 per MCF.[19] A recent Canadian study estimates 1980 direct production costs at $144.25, and projects 1983 costs at $214.05.[20]

Spot prices for ammonia on the Gulf averaged $84 per short ton in 1978. Low prices persisted through the first half of 1979, then started rising as consumption

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[13] ITC Report TA–406–6, April 1980; and exhibit A.
[14] See exhibit A.
[15] See exhibits A and F.
[16] See exhibit B.
[17] ITC Report TA–406–6, April 1980, pp. A-59–A-66, and the Fertilizer Institute Production Cost Survey, Ernst and Ernst, 1979.
[18] Schnittker Associates Economic Report, ITC Hearing TA–406–6, dated Mar. 1, 1980, p. 34.
[19] ITC Report TA–406–6, April 1980, pp. A–61–A–73.
[20] Oil & Gas Journal, "Ammonia Costs Linked to Gas Prices," Apr. 21, 1980, attached as exhibit H.

started expanding rapidly, reached an average of $128–$132 in the fall, and leveled off there until the second week in January 1980. From January 7, 1980 to February 18, 1980, prices increased in the Gulf spot market from $128–$132 to $158–$163.[21] Prices held there until about mid-March, then started declining. Prices are now holding around $140–$145 per ton as we enter the peak demand period for spring planting. Once planting is over, we hope prices will hold at this level, but they may well fall back to around the $130 level.

U.S. producers were selling below production costs in 1978 and part of 1979. ITC statistics showed that U.S. producers' profits rose from one percent in 1978 to about five percent in 1979. Production costs are projected to rise to $275/ton by 1985.[22]

THE NATURE OF THE U.S. MARKETPLACE

The market for ammonia and nitrogen fertilizer is essentially a commodity type market. Ammonia is sold to be applied directly as fertilizer, to make other nitrogen fertilizer compounds and, industrially, to make explosives and blasting agents, livestock feeds, fibers, plastics, resins and elastomers. The nitrogen fertilizer market is highly competitive and prices will fluctuate from week to week in some markets like the Gulf spot market.

The greatest demand for fertilizer is in the spring. Almost half of the nitrogen fertilizer in the U.S. is used in the production of corn, so the spring market in the Corn Belt is one of the most important. About 60 percent of the year's nitrogen fertilizer supply is applied in approximately a 4–8 week period in the spring. Most of the balance goes on in the fall for winter wheat and preparation for the spring planting. Top dressing during the year accounts for the rest.

Ammonia storage is critical and expensive. There is some storage at plant sites, in pipelines and tank cars, and at dealers' and distributors' locations, but not nearly enough to balance out production on a weekly or monthly basis. There is an enormous logistic and transportation system used to move ammonia to market. The transportation system consists of pipelines, tank cars, barges, and trucks. This spring is a good example of the problems that can develop. Spring this year was too wet and very late. Snow cover stayed around into March and April, and the spring fertilizer season has been compressed. You can only fill pipelines, trucks, barges and tank cars so fast. Everyone wants ammonia and other fertilizers all at once because typically fertilizer is applied within about a two week period in a specific area.

Prices vary around the country. The lowest prices are usually found in the Gulf Coast spot market. Much of the ammonia production is sold through company owned outlets, on contract to independent distributors and dealers, to other fertilizer upgraders and to industrial producers. The balance is sold on the daily market in and around the Gulf by the tank car, barge or ship load.

About half of the U.S. ammonia production capacity is located in Louisiana, Oklahoma and Texas. There is significant production in Mississippi and surrounding Southern States. This came about primarily because there was abundant lower cost gas in the Gulf area. This is changing rapidly.

Much of the ammonia and fertilizer is thus shipped from the Gulf area to markets in the Midwest, for example. There it will compete with production made nearby. If the dealer delivered price to distributors in a given week in the Midwest is $175 per ton, the price to the farmer will be $210–$220 per ton and the netback or f.o.b. plant price in the Gulf area will be about $130 due to transportation and storage expenses. The Gulf spot price typically would be near the f.o.b. Gulf plant price, but not always. Gulf spot prices in late fall of 1979 were higher than an f.o.b. plant netback from Midwest sales, for example. Gulf spot prices jumped in January and February due to export demand and speculation about reduced Soviet imports. Other prices around the country did not directly follow suit.

The West Coast market is somewhat separate due primarily to transportation costs. It is supplied locally, from Alaska, Western Canada, Mexico and by Soviet imports. Most of the ammonia brought in from outside the area is by ship. As a result, prices are usually higher in this market than in those east of the Rocky Mountains. It is roughly about 10 percent of the total market.

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[21] ITC Report TA–406–6, April 1980, pp. A-67–A-73.
[22] Schnittker Associates Economic Report, ITC Hearing TA–406–6, dated Mar. 1, 1980.

Prices are extremely sensitive to supply changes and commodity price changes for grain. A 1 percent change in supply will cause about a 4–5 percent change in the price.[23]

The U.S. ammonia market has been disrupted in the last two years from excess capacity and increasing imports, which produce excess supply and lower prices. At the same time, producers are being squeezed by rapidly increasing production costs principally caused by rising gas and electricity costs. Consumption rose by about 4 percent in 1979 over 1978 as a result of very good weather in the fall and an abnormally heavy application at that time. Consumption is expected to decline this year and exports are expected to remain about level or drop from highs posted in 1979.[24] In addition, imports are expected to increase from the Soviet Union.

Something has to give to get supply and demand back toward a balance. It is this supply—demand imbalance, what causes it and how the market reacts to it that causes increasing dependence on Soviet imports to become overdependence.

SUPPLY-DEMAND ANALYSIS

U.S. ammonia producers are currently disadvantaged against the Soviets in the highly competitive, commodity type market that exists here due to rapidly rising production costs. The same kind of cost increases have hit Western European and Japanese producers even harder. Those cost increases are primarily caused by the enormous increase in feedstock costs. U.S. producers who use natural gas are not as impacted as Western European and Japanese producers who pay world prices, but this difference will disappear over the next three to five years—certainly in 1985 when natural gas deregulation is scheduled to take full effect.

There is one simple fact that will dominate the supply side for the next few years. The pre-determined levels of Soviet ammonia imports coming to the U.S. under the Soviet-Occidental agreements will equal the volume of growth in demand at least through 1982.

Attached as Exhibit A is an analysis and projection of supply-demand balance from 1977 through 1985. This analysis was prepared by A. D. Laehder, Vice President, Research and Planning, Agricultural Chemicals Group, W. R. Grace & Co., who is an acknowledged expert in market forecasting. Like all experts, he will differ some with his peers, but the industry forecasts are remarkably similar.

This analysis starts from the base of the capacity of U.S. operating plants and idled capacity capable of restarting.[25] We use 1977–1979 totals for actual U.S. production for each calendar year, which when compared with capacity gives us the capacity utilization percentage. We then add imports from all sources and arrive at a total U.S. supply figure.

Demand consists of domestic fertilizer and industrial consumption, which is projected at a —2.2 percent growth rate for 1980 based on our latest information and at an annual growth rate of 4.5 percent thereafter. We are projecting exports to stay up near the relatively high 1979 levels if there are no restrictions on Soviet imports, but that may be somewhat optimistic.

The analysis projects supply-demand balance on the assumption it will equal out each year. Of course, this never actually happens, and the miscalculations wind up in higher or lower inventories at the end of the year. The result of the zeroing is to show the adjustments which will be necessary on the supply side to balance it with demand. We know the announced levels of Soviet imports. We can estimate imports from Canada and Trinidad with reasonable accuracy. The Mexicans have been quite outspoken about their export plans, and they indicate they will sell at least 40 percent of their exports in the U.S. In our forecast, we estimate that about 50 percent of those exports will come to the U.S. We have done a separate analysis of imports from Canada, Mexico and Trinidad, which was submitted to the ITC and which Occidental did not contest. That updated analysis is attached as Exhibit E. We, of course, use the results of that analysis in the supply-demand analysis.

Thus, the result of the balancing shows up in U.S. production changes on line 8 of Exhibit A. The additions to capacity that have been announced are taken into

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[23] Schnittker Associates Economic Report, ITC Investigation TA–406–5, dated Aug. 22, 1979. pp. III–47—III–52.
[24] Exhibit A.
[25] Exhibit B.

account, and the percentage of capacity utilization is calculated based on operating plants and operating plus idled plants capable of restarting. Those results are on lines 4 and 5.

Our analysis set out in Exhibit A projects supply and demand on three different assumptions. The first columns (4–9) show the result if Soviet ammonia imports continue without any restrictions. Note that almost all of the change in U.S. supply between 1979–1982 is accounted for by Soviet ammonia imports. The second assumption (columns 10–15) is that quotas at 1979 levels of 777,000 short tons are placed on Soviet imports. Note the improvement in capacity utilization for operating U.S. plants in 1980, 81 and 82 from 83 percent, 84 percent, and 85 percent to 86 percent, 91 percent and 92 percent respectively. Likewise, U.S. production (netted for inventory change), which drops slightly then returns to 1979 levels in 1982 if there are no restrictions on Soviet imports, increases by about 1.333 million short tons in 1982 over 1979 if quotas are imposed. If the Soviets started importing the one million tons of urea that Occidental has agreed to buy, these results would be worsened. U.S. production and capacity utilization would be much lower. The ammonia equivalent of one million metric tons of urea is about 618,000 short tons of ammonia.

The third assumption in Exhibit A of no ammonia or urea imports from the Soviet Union (columns 16–21) is to provide the Committee with a perspective of what would be required in the event of a cut-off of Soviet ammonia imports. Capacity utilization in currently operating plants would have to increase to 90 percent in 1980, 94 percent in 1981 and 96 percent in 1982. This would probably prove to be impossible in 1981 and 1982 since maximum utilization over a full year would be about 92 percent. Available idled capacity which could be brought back into production is estimated to be 1.942 million short tons in 1980, 1.432 million tons in 1981 and 1.381 million tons in 1982. If all of that idled capacity were returned to production, capacity utilization would be 82 percent in 1980, 89 percent in 1981 and 90 percent in 1982—well within reasonable production limits. However, it would take six months to a year to bring that capacity back on line.

In 1983–1985, the ability of U.S. producers to respond to a cut-off declines dramatically. We cannot expect much currently idled capacity to be available after 1982 if Soviet imports increase at projected levels.

An analysis of the ability of Canada, Mexico and Trinidad to increase exports to the U.S. is attached as Exhibit E. Column 11 expresses the probable level of those imports. Column 9 shows how much exports could increase if all of the increased production was imported to the U.S. This would be highly unlikely. Total probable export capacity from these countries increases by 171,000 short tons in 1980, 325,000 tons in 1981 and 590,000 tons in 1982. This compares to Soviet import levels of 1.5 million short tons in 1980, 2.0–2.3 million tons in 1981 and 2.3–2.75 million tons in 1982. The situation might be manageable by 1985, since probable exports from Canada, Mexico and Trinidad could increase to 2.186 million short tons. Some additional U.S. production capacity would be required in the meantime to replace old plants and make up the difference.

The critical factor is how long idled U.S. capacity will be maintained in a condition adequate to return to production within six months to a year and how much existing U.S. capacity can be kept on line. That assumes natural gas and skilled labor can be found, as well. The higher the Soviet imports rise and the longer we go, the less likely that idled capacity will be available. Our ability to respond declines continuously. In the event of a cut-off, at best, we end up more dependent on imports, albeit from Canada, Mexico and Trinidad. Those imports will not be cheap as the energy costs in Canada and Trinidad are comparable to the U.S. Mexican ammonia is currently low cost because they are flaring their associated gas, but that will soon change. At least those sources are a somewhat more reliable source of supply. However, even those sources are not certain to be able to help if we need them.

SOVIET DOMINATION OF WORLD AMMONIA EXPORT MARKET

In its Ninth Five Year Plan (1971–75), the Soviet Union undertook a massive expansion of its chemical fertilizer and petrochemical industry, principally through the purchase of Western technology. As part of that objective, they undertook to construct up to 40 large ammonia plants by 1982. A CIA report, "Soviet Chemical Equipment Purchases from the West: Impact on Production and Foreign Trade," October, 1978, states that the Soviets contracted to buy at

least 31 of these plants from Western firms, principally from Japan, Italy, France and the U.S. Most of these were financed through complex and large countertrade deals and low interest financing from Western governments. This development was reviewed in the Oil and Gas Journal, "Soviets Aim for Buildup in Petrochemical Exports," August 20, 1979.

The ITC reported that the Soviets had 9.0–9.5 million short tons of ammonia capacity in 1970. This had grown to 17 million tons in 1977 and is projected to double to over 34.0 million tons in 1982. Actual production is projected to average only about 80 percent of capacity.[26] Soviet ammonia production capacity was about 16 percent less than U.S. ammonia production capacity in 1977, and will be approximately 40–60 percent greater than U.S. capacity in 1982. By 1985, the Soviet Union will be the dominant factor in world nitrogen trade with 25 percent of world production capacity and approximately 50 percent of world ammonia exports.[27] The CIA stated in their 1978 report that this capacity "does not appear to reflect either Soviet or world market needs." The CIA also concluded in that report that the Soviet's ammonia exports "will be an important destabilizing factor in world ammonia markets in the 1980's."

There can be no doubt that the Soviets are building ammonia, urea and methanol capacity far in excess of their domestic requirements and their requirements to Eastern Europe, Cuba, Vietnam and Mongolia (Council for Mutual Economic Assistance). The Oil and Gas Journal article of August 20, 1979, stated "[e]ffects of Soviet petrochemical expansion are already being felt in non-Communist world markets in nitrogen fertilizer, urea and ammonia. The 1980's are likely to see a strong Soviet drive to increase foreign sales of these products, together with such feedstock/fuels as methanol." [28]

The ITC staff reported in the TA–406–6 report in April, 1980 that a CIA study in July, 1979 reported that the Soviet Union would have 27–29 million short tons of capacity in 1980, with production of 22–24 million tons. Domestic consumption is estimated to total 15–17 million tons and exports will reach between 3–4 million tons.[29]

Two recent reports by the British Sulphur Corporation, a recognized authority on worldwide fertilizer developments, are even more specific and revealing. They are attached as Exhibits I and J. They reveal that Soviet domestic consumption was held to about a 2 percent increase in 1978 and 1979 in order to meet the export commitments of the Soviet ammonia industry. Anhydrous ammonia is by far the largest component of Soviet fertilizer exports.

Soviet ammonia exports were 715,000 metric tons (788,100 s.t.) in 1978 and 1.8 million metric tons (2.0 million s.t.) in 1979. British Sulphur estimates that 1980 exports will be 2.4 million metric tons (2.65 million s.t.). They note that no less than ten large plants are to be handed over to the Soviets by the constructors in 1979–80 (495,000 short tons/yr. each). Five such plants were handed over in 1978–79, and three more will be turned over in 1980–81, completing an unprecedented ammonia production capacity expansion by a single country. The early 1980's are predicted to be a period when the Soviets adapt their output to export commitments made in the 1970's. Only a modest increase in Soviet domestic consumption is predicted until the mid-1980's, when another massive expansion of ten plants is expected to come on stream, which is now dedicated to meeting Soviet internal nitrogen requirements.[30]

The significance of what the Soviets are doing with ammonia exports is apparent when world export trade is analyzed. World export trade figures do not include captive production. World trade in ammonia averaged around 3.5 to 4.0 million metric tons (3.86–4.41 million s.t.) in 1975–77. This jumped to 4.950 million metric tons (5.5 million s.t.) in 1978 and 5.649 million metric tons (6.2 million s.t.) in 1979, which were record levels. British Sulphur expects 6.2 million metric tons to be traded in 1980, with the Soviets trading 2.4 million metric tons of the total. Virtually all these world export trade increases are attributable to increases in Soviet exports, and over half of the Soviet increase is in exports to the U.S. (It is interesting to note that when Soviet ammonia imports to the U.S. took a big jump in 1979, U.S. exports of ammonia took a big jump. British Sulphur notes that the U.S. is unlikely to maintain that level

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[26] ITC Report TA–406–6, April 1980, p. A–29.
[27] Exhibits I and J.
[28] *Oil and Gas Journal*, Aug. 20, 1979, p. 41.
[29] ITC Report TA–406–6, April 1980, pp. A 20–21.
[30] See exhibit I.

as the Soviets move into the markets found by the U.S. in 1979. Production cost increases will also render U.S. producers not competitive.) [31]

British Sulphur notes in its Nitrogen Report No. 124 the problems Mexico has had in production and exporting, and that the Soviets are expected to take the "lion's share of international ammonia trade" in 1980.[32] The article goes on to state that, "[b]y the middle of the decade Soviet exports are likely to surpass the 3.0 million ton (3.3 million s.t.) mark even though total world ammonia trade is unlikely to have outgrown the 4.5–5.0 million tons (4.96–5.50 million s.t.) range. *Sustained domination of international ammonia trade on this scale,* coupled with the expected satisfaction of domestic demand as the next wave of 1,360 t.p.d. plants (495,000 short tons/yr.) comes on stream in the mid-1980's, *should leave none in doubt that by the end of the decade the U.S.S.R. will have the loudest voice in international nitrogen affairs.*" [Emphasis added] [33] We believe this estimate is conservative.

Finally, the ITC staff reported data from the Tennessee Valley Authority that predicts that world nitrogen fertilizer supplies will exceed consumption at least through 1985.[34]

The clear conclusion from these studies is that the Soviets are out to dominate the world export trade in ammonia, urea, nitrogen fertilizers and possibly methanol by the mid-1980's, if not before then. They appear to be well on their way to accomplishing that goal with ammonia, most of which is scheduled to come to the U.S. The Soviets are financing the rest of their build-up of petrochemical production capacity with sales of ammonia and urea. It is clear that the problem now faced by the United States is not an isolated one. The U.S. has just been hit first and hardest. Most of the Soviet ammonia export expansion will come to the U.S. through 1982–83, when it is scheduled under the agreements to level off here at around 2.5 million short tons.

Ammonia is only the first of the fertilizer and petrochemical problems that the U.S. and the Western industrialized countries must face from exports from the Soviet Union in the 1980's. We repeat again, and the price and market analysis reported in the above articles bear this out, U.S. producers cannot stop these imports by out-competing the Soviets.

THREAT OF A SOVIET CUTOFF OF AMMONIA EXPORTS TO THE U.S.

Dr. Armand Hammer, Chairman of Occidental Petroleum Corporation, made it clear at the last ITC hearing on this matter on March 3, that the

"Soviets could readily sell their ammonia elsewhere at very favorable prices. I flew to Moscow last week to meet with President Brezhnev, Trade Minister Patolichev and other Russian officials in the hope of persuading them that ammonia shipments should continue in spite of the embargo on phosphate exports. It is my belief that the Soviets intend to continue their shipments of ammonia to the United States, and it is my long-held belief that the Soviets are reliable and dependable trading partners." Dr. Hammer then goes on to state, "If ammonia imports are subjected to a more severe limitation than the quotas ordered by the President, the Russians could well regard this as an indication that the U.S. will not live up to its commitments, and I believe that could be the final blow which would end the agreements and cut off all ammonia imports." [35]

Dr. Hammer tries to characterize this attitude of the Soviets as that of a reliable trading partner. But, there is the threat that the U.S. should do nothing to indicate it will not "live up to its commitments" or the Soviets will "cut off all ammonia imports." This also infers that the Soviets will export pre-determined volumes of ammonia to pre-determined places without regard to the world market, the U.S. market or their own internal economic interests. President Carter determined that Soviet imports above 1.0 million short tons were not in the national interest of this country. He also embargoed sales of grain, phosphate fertilizer, certain technology and many other items in the national interest. If the United States asserts its national interests by now placing quotas on Soviet ammonia imports, and that is to be interpreted by the U.S.S.R. as an indication the U.S. will not live up to its commitments, why do they not interpret

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[31] See exhibit J.
[32] Id., pp. 6–7.
[33] Id., p. 33.
[34] ITC Report TA–406–6, Apr. 1980, p. A–28.
[35] Testimony of Dr. Armand Hammer, Chairman of Occidental Petroleum Corp., ITC Hearing in TA–406–6, Mar. 3, 1980.

the embargo of sales of grain and phosphate fertilizer from Occidental as an indication that the U.S. will not live up to its commitments? We cannot answer that question, but it indicates that the Soviets view their ammonia exports to the U.S. as more important than meeting their own current domestic fertilizer needs and that it means something to them other than a simple commercial transaction.

We point out again we are not urging a cut-off of all ammonia imports. That threat is apparently coming from the Soviet Union. We do not believe any current U.S. customer of Occidental should be cut off or have its agreed upon volumes of ammonia reduced by any U.S. Government restriction on Soviet imports. This would be a particularly harsh result for those seven U.S. producers which shut down their own plants to buy Soviet ammonia. Quotas could easily be set at levels to permit continued deliveries of those agreed upon amounts.

The Committee should be aware, however, that some or all of these contracts with the Soviets apparently have a "force majeure" clause that allows the Soviets to cease deliveries at any time, for any amount of time, without any recourse or compensation to the U.S. customer. The U.S. customer assumes all risk of loss or damage. That is certainly not a normal commercial risk assumed in international trade.

SOVIET-OCCIDENTAL MARKETING METHODS

Occidental stated in its Form 10–K filed with the SEC on April 2, 1979, that their:

"Objective with respect to future purchases of ammonia, urea and potash from the U.S.S.R. is to avoid losses through pre-selling of the U.S.S.R. products to the extent practicable. It may not be possible for Occidental to pre-sell all or substantially all of the U.S.S.R. products, so that Occidental may realize some profit or loss on such purchases. However, if Occidental were able to pre-sell substantially all of the U.S.S.R. products, the bulk of Occidental's future profits, if any, from the fertilizer agreements would be derived from the shipments of SPA to the U.S.S.R. and from the discounts (less selling, general and administrative expenses) on purchases of ammonia, urea and potash from the U.S.S.R." [36]

The method Occidental employed in 1977–1979 to pre-sell over 700,000 tons of ammonia for delivery commencing in the years 1978 and 1979 was to negotiate letters of intent with U.S. customers which fixed the term—up to ten years in at least two contracts and six years in another—and the price for up to three years. At least seven of the first nine contracts fixed the price forward for three years with set escalation clauses of 3–6 percent.[37] Seven customers also shut down a comparable amount of their own ammonia production.[38] Occidental testified at the March 3, 1980 hearing before the ITC that a tenth contract had been negotiated for 1980.

With these letters of intent, Occidental would then negotiate specific contracts with the Soviet Union which matched the volumes, term and prices in the letters of intent. These are the "forward pricing" and "back-to-back" contracts referred to by the ITC. The ITC staff reported in TA–406–6 at page A–112 that "James J. Galvin, President of the Agricultural Products Group of Hooker Chemical Corp., a subsidiary of Occidental, testified at the Commission's hearing that Occidental does not have long-term fixed price agreements with the U.S.S.R. He said that Occidental, prior to negotiating a price with the Soviets, first negotiates with its customers, obtains letters of intent from them, and then with such letters of intent negotiates prices and quantities with the Soviets. He said that none of Occidental's customer contracts run for periods longer than the particular contract with the U.S.S.R."

There are virtually no U.S. producers that can offer such "forward pricing" contracts in these volumes for three years due to escalating gas and other production costs far in excess of 3–6 percent per year. This is true even for the few very low cost gas producers which accounted for 11 percent of the U.S. industry in 1979. Most of those gas contracts will be expiring very soon, and much of that production is captive or already committed or contracted.

The ITC concluded in its first investigation and report in October 1979:

"The strategy used to market Soviet imports consists of entering into long-term forward pricing contracts. Occidental negotiates with potential customers

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[36] Occidental Petroleum Corporation's Form 10–K, filed Apr. 2, 1979, SEC, p. 30.
[37] Green Markets, Sept. 10, 1979.
[38] ITC Report TA–406–6, pp. A–74–A–75.

and obtains letters of intent to purchase quantities of ammonia at certain prices and then, in turn, agrees upon prices and quantities with the U.S.S.R. with fixed prices for specific periods of time.

"The contracts under which Occidental sells to its customers are for periods up to 10 years with prices fixed during the first 3 years. The prices in the second and third years are fixed except for nominal price increases through escalation clauses ranging from 3 percent to 6 percent per year. Occidental is thus able to offer ammonia in the U.S. market at firm prices for specified periods of time by virtue of the arrangements it has been able to make with its Soviet Supplier. *The production and sale of ammonia by the U.S.S.R. is a governmental operation and does not, therefore, have to be responsive to the disciplines of a free market economy. Hence, pricing and marketing procedures are being used which are extraordinarily difficult, if not impossible for U.S. producers, to meet.* The prices at which the ammonia was sold in the first year of the contracts appear to have been at levels comparable to U.S. market prices at the time these forward price contracts were entered into. However, in subsequent years, the price at the time of delivery, even with the application of a price escalation clause, will likely be below U.S. market prices of domestically produced ammonia. The forward pricing of U.S.S.R. ammonia which does not reflect the escalating raw material costs being experienced by U.S. producers serves to aggravate the cost-price squeeze which the domestic industry is experiencing. U.S. producers who are confronted with rapidly increasing costs of natural gas are unable to compete with forward price long-term contracts made available by the U.S.S.R.

"As a result of Occidental's unique ability to forward price through long-term arrangements with the U.S.S.R., imports from the U.S.S.R. are able to penetrate the market to an unlimited extent." [Emphasis added.] [39]

The Commission also found that a further significant consequence of these sales of Russian ammonia was the shut down of existing U.S. capacity.

"The risks are heightened with each further reduction in U.S. ammonia production capacity. *Statements given at the Commission's hearings indicate that the lower long-term prices of Soviet imports were used to encourage the cessation of domestic production by some U.S. producers in favor of the purchase of Soviet imports. As Soviet imports continue to capture a larger share of the total U.S. ammonia market, the vulnerability to sudden shortages will become increasingly significant."* [Emphasis added.] [40]

Occidental stated in their Form 10–K filed with the SEC on March 31, 1980, at page 25:

"Through 1979, specific contracts were negotiated establishing prices and certain delivery schedules with respect to 1,000 000 metric tons of SPA for each of the years 1980 and 1981, 1,300,000 to 1,400,000 metric tons of ammonia for 1980, [subject to Note (3) above], and 600,000 metric tons of ammonia for 1981. Specific contracts have been negotiated establishing delivery schedules with respect to the 1,000,000 metric tons of urea to be delivered in 1980." [41]

So long as the Soviets persist in exporting the pre-determined amounts of up to 2.3–2.75 million short tons of ammonia per year to the United States through 1987 as called for in these agreements, the result will be increased dependency on the Soviets for at least 10 percent of total U.S. consumption and 15 to 18 percent of our consumption of nitrogen fertilizers. If exports of 1.1 million short tons of urea called for in the agreements are delivered to the U.S., that dependency will be even greater. (The nitrogen content of the urea would be equivalent to 618,000 short tons of ammonia.) Take note also that apparently Occidental only has exclusive rights to sell in the U.S. It appears sales elsewhere would have to be approved in advance by the Soviets.

THE U.S.S.R.-OCCIDENTAL AGREEMENTS

The ITC staff summarized these agreements in the April 1980 Report to the President, Investigation TA-406-6, at pages A-21 through A-24 as follows:

"A detailed analysis of the Occidental-U.S.S.R. agreements by the General Counsel's office is presented in appendix G. In April 1973, Occidental and the U.S.S.R. signed a 20-year $20 billion Global Agreement concerning, among other

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[39] ITC Report TA–406–5, October 1979, pp. 7–8.
[40] *Id.* at 10.
[41] Exhibit K.

things, the export of ammonia from the U.S.S.R. to the United States. In this agreement the U.S.S.R. granted Occidental the exclusive right to purchase the U.S.S.R.-produced ammonia for sale in the United States. In return, Occidental agreed to purchase up to 1.7 million short tons of ammonia each year during 1978–98 from the U.S.S.R. This quantity was later increased to 2.3 million short tons each year for the first 10 years of the deal. In addition, Occidental agreed to purchase 1.1 million to 1.7 million short tons of urea and 1.1 million short tons of potash each year during 1978–98. In addition to its grant of an exclusive license to Occidental, the Soviet Union also agreed in the 1973 Global Agreement to make comparable purchases of U.S. goods, including 20 million tons of superphosphoric acid from Occidental. The Global Agreement requires that the U.S.S.R. pay for the superphosphoric acid supplied by Occidental with the proceeds obtained by the U.S.S.R. from sales of ammonia, urea, and potash. The precise quantity, price, and terms of delivery of the ammonia and urea have been the subjects of a series of separate purchasing agreements between the U.S.S.R. and Occidental.

"The 1973 Global Agreement also contemplated the construction of several ammonia plants in the Togliatti area of the Soviet Union, as shown in figure 3. Occidental is not involved directly in the actual construction of these plants, with contracts for such construction being awarded to other U.S. and Japanese firms. A contract for four ammonia plants was awarded to Chemico, a U.S. firm, in July 1974. Chemico agreed to act as the prime contractors, supply technology, and supervise construction and startup operations. Soviet enterprises are performing the actual construction of the plants. Chemico's ties with the Soviet Union date back to 1929 when the company built the first synthetic ammonia plant in that country.

"Occidental's commitment under the Global Agreement also calls for the construction of a 1,600-mile ammonia pipeline connecting the ammonia complex at Togliatti with Odessa on the Black Sea. The parties involved in this project are Occidental, acting as the main contractors, two other U.S. firms in consulting capacity, and France's Societe Entrepose, a subsidiary of Vallourec SA. The U.S. firms agreed to oversee the engineering and construction work, with Entrepose supplying most of the equipment, including 180,000 tons of pipe. The agreement provided that equipment from French sources would be financed with French credit. The 14-inch diameter pipeline, with a projected annual capacity of 4.4 million tons, was originally scheduled to be completed by the end of 1978. However, Occidental officials report that the pipeline construction is behind schedule. Until the completion of the pipeline, ammonia is being delivered to the port in tank cars. The Odessa port facility will have storage capacity for 100,000 short tons of ammonia and can be served by rail with unloading capacity of 4.4 million tons per year. In addition, the Soviet Union will have a port facility at Venspils with ammonia storage capacity of 66,000 tons and rail unloading capacity of 4.4 million tons.

"The financing of the original contract involved a U.S. Export-Import Bank (Eximbank) credit of $180 million at an annual interest rate of 6 percent granted in May 1974. This credit was matched by a commercial bank credit of $180 million provided by a nine-bank consortium headed by the Bank of America. The U.S. credits are repayable in 24 semiannual installments starting on May 20, 1979, with Eximbank's credit to be repaid out of the last 12 installments. The average annual interest rates on the combined credits is expected to be 7.8 percent. These credits represent the largest single loan which Eximbank has made to the Soviet Union in its 40-year history and one of the last Eximbank loans the Soviet Union received. Section 402 of the Trade Act of 1974 prohibits those countries not enjoying most-favored-nation treatment, including the Soviet Union, from participating in any program of the United States Government which extends credits, credit guarantees, or investment guarantees, directly or indirectly.

"The Soviet Union also has countertrade agreements with a number of other countries. Early in 1978, major Soviet deliveries of ammonia and other chemicals to Italy began in compensation for ammonia plants and other industrial equipment supplied by Italy. The Soviet Union will also provide the French fertilizer industry with 150,000 to 200,000 tons of ammonia per year for 10 years in exchange for the construction of ammonia-producing facilities by Creusot Loire at Odessa."

An extensive ITC staff analysis of the agreements was also included in that report as Exhibit G, which states at page A-107:

"The fertilizer agreements are constructed with the idea that the value of the superphosphoric acid sold by Occidental to the U.S.S.R. over the entire 20-year

period should not exceed the value of Occidental's purchases of ammonia, urea, and potash during the period. The agreements provide that, at the request of one of the parties, they are to meet from time to time in order to work out an arrangement for meeting this objective. Occidental's purchases of up to 600,000 metric tons of ammonia annually under the 10-year agreement, i.e., through 1987, are for the purpose of enabling the U.S.S.R. to repay, with the sales proceeds, $900 million (including interest) borrowed by the U.S.S.R. from the Export-Import Bank of the United States and a group of U.S. and foreign banks to construct the various fertilizer facilities in the U.S.S.R., including the port storage and pipeline facilities to which the technical agreements relate. Occidental is permitted to purchase up to an additional 400,000 metric tons of ammonia annually under the 10-year agreement in order to satisfy this objective."

The following tabulation from Occidental's Form 10-K filed with the Securities and Exchange Commission on March 31, 1980 sets out the agreed upon volumes by year. The portions of the 10-K relevant to the Soviet-Occidental deal are included in this testimony as Exhibit K.

[In thousands of metric tons]

	1978	1979	1980	Each of the years 1981–87	Each of the years 1988–97
Sales to U.S.S.R.: SPA[1]	10	480	1,000	1,000	1,000
Purchases from U.S.S.R.:					
Ammonia:					
Pursuant to a 10-year agreement[2]	350	510	[3]450	600	(?)
Pursuant to a 20-year agreement[1]		440	600	1,500	1,500
Total ammonia[3]	350	950	1,050	2,100	[4]1,500
Urea[1]	23	[4]473	1,000	1,000	1,000
Potash[1]		[5]830	1 000	1,000	1,000

[See p. 654 for footnotes.]

Footnote 3, relating to the agreed 1980 level of purchases of ammonia, notes that an additional 250,000 to 350,000 metric tons of ammonia will be contracted on April 30, 1980.

These agreements are based on and dependent on the sale of pre-determined volumes of SPA, ammonia, urea and potash. The 20 year agreement is a pure barter in effect. Occidental will receive for its specific volumes of SPA what the net sales proceeds are to the Soviets on the sale of ammonia, urea or potash. While Occidental has an incentive to pay the highest possible price for the Soviet product, it must resell those products in market economies. Moreover, Occidental must sell the specified amounts without regard to demand in each year, and thus must take the best price it can get and still move the product. The 10 year agreement presents the same problem in a market economy. The volumes are set. If the sales proceeds to the Soviets are not enough to repay the loans, the higher volume must be sold, which reduces the price per ton further.

OTHER ARGUMENTS MADE BY OCCIDENTAL TO THE ITC TO ALLOW SOVIET IMPORTS TO CONTINUE INCREASING AT UNRESTRICTED LEVELS

Energy savings

Occidental argued that the importation of Soviet ammonia would save United States energy sources for other uses. However, the energy savings from importing the full contractual quantities of Soviet ammonia and urea from 1978–1997 amounts to only 37 days of our nation's long-term natural gas supply. This "savings" amounts to approximately two days of current known gas supplies per year.[42] In addition, increased levels of Soviet ammonia imports will discourage, if not prevent, U.S. producers from making the significantly higher capital investment required to produce ammonia from alternate feedstocks, such as coal, when the time comes to replace or add new production capacity in the future.

[42] See exhibit G.

Import quotas would be inflationary

Occidental also argued that the implementation of import quotas on Soviet ammonia would be inflationary in that it would tend to raise ammonia prices. The implementation of quotas will not impose significant increased costs on domestic consumers of ammonia. Ammonia prices have been rising over the past year in response to uncontrollable cost pressures and will continue to do so. These cost increases mainly have been in the form of increasing costs for natural gas and other forms of energy (the major costs of producing ammonia are the costs of natural gas and electricity). Thus price increases for domestic ammonia are inevitable in a period of rapidly increasing energy costs, regardless of the level of imports of Soviet ammonia.

The incremental increase in ammonia prices attributable to quotas will not be significant to the consumer. Consumer food costs reflect grain prices paid to the farmer not fertilizer process paid by farmers. Higher grain prices increase demand and prices for nitrogen fertilizers not vice versa. For purposes of illustration, even assuming that prices rise as much as $40 per ton, the farmers' cost to produce corn and wheat would only be increased by approximately 4 cents per bushel. At the consumer level, the price increases would only increase the cost of bread by less than 1/10 cent per loaf and would only increase meat prices by approximately ½ cent per pound. In contrast, the cost to consumers for increased retail food prices as the result of a sudden 10 percent decline in available fertilizer supplies, which would occur if the Soviet supply is interrupted or cut off, would result in a 75 cent a bushel increase in the price of corn and at least 50 cents a bushel for wheat due to decreased grain yields. The effect would increase food costs to consumers by approximately $5.5 billion over a one to two year period. The possibility of insignificant price increases is a small but necessary price to pay to prevent undue dependence on the Soviet Union for a vital material.

Other issues

Occidental also contended at the ITC hearings that its customers and markets could only be served by offshore supplies with ship transport. Occidental particularly concentrated on the West Coast and Florida markets, where it sells most of the Soviet ammonia. The West Coast situation has already been mentioned. At the ITC hearing on March 3, 1980, we pointed out that the Florida market is basically eleven DAP manufacturing plants and one large producer of ammonium nitrate. Nine of these plants are owned by domestic ammonia producers who supply their own ammonia needs from their own captive production. W. R. Grace & Co. is and has been the largest importer through the port at Tampa, Florida, and the Royster imports of Soviet ammonia would not be affected by quotas.

Moreover, the Florida market is easily served by transporting ammonia by rail. Rail freight rates from Mississippi and Louisiana, which are major production points in the Gulf, to Central Florida range from $15.55 to $22.61, and rail already accounts for the bulk of the volume of ammonia entering Florida.[43] At Commissioner Alberger's request, we prepared a list of ammonia plants positioned to serve Central Florida with a $25.00/ton rail freight rate. There are 20 ammonia plants with a combined capacity of 9,722,000 short tons out of total U.S. capacity of 20,670,000 short tons, within a $25.00 freight rate to Central Florida. That is 47 percent of total U.S. capacity.[44]

COMPARISON OF QUOTAS AND TARIFFS

Both the twenty year agreement and the ten year agreement between the U.S.S.R. and Occidental are based on the sale of pre-determined volumes of ammonia, urea, potash and superphosphoric acid (SPA). That is, of the three elements of volume, term and price, two are fixed in advance—volume and term. Moreover, the volume is also fixed on an annual basis, and the total dollar value over the full term must be equal in the twenty year countertrade deal and must yield a preset amount in the ten year loan repayment deal.

The 10-year agreement

This agreement calls for Occidental to buy and resell for cash 660,000–1.1 million short tons of ammonia per year for ten years to produce net sales proceeds to the Soviets of $900,000,000.

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[43] Testimony of Donald V. Borst, ITC Hearing TA–406–6, Mar. 3, 1980. Transcript p. 31.
[44] ITC Investigation TA–406–6, Mar. 3, 1980 Hearing.

Based on Occidental's Form 10–K filed with the SEC on March 31, 1980, and the ITC Report in TA–406–6, April 1980, at pages A–21 to A–24, Occidental purchased 350,000 metric tons in 1978, 510,000 metric tons in 1979, and is to purchase 700,000–800,000 metric tons in 1980, and 600,000 metric tons per year for seven years, 1981–1987, under the ten year agreement. This will total 5,760,000–5,860,000 metric tons over the life of the agreement. Occidental can purchase an additional 400,000 metric tons per year in 1981–1987, for a total of 2,800,000 metric tons. Total sales could thus be as high as 8,660,000 tons.

In order to raise $900,000,000 to repay the Export-Import Bank, the group of nine private banks headed by Bank of America and, apparently, a $230 million French credit for the pipeline construction, the ammonia must be sold for an average price of $102 to $156 per metric ton. This would be the net sales proceeds required after deduction costs of transportation, labor, fuel costs, the 2.5 percent discount to Occidental and whatever other direct costs the Soviets choose to charge against the proceeds. Almost all the ammonia will be shipped in Soviet vessels through 1981, which presumably allows the Soviets a better cash return. Thereafter, the agreement calls for half to be shipped in vessels owned or chartered by Occidental. Occidental is building three ocean going barges to ship SPA to the Soviets which are being subsidized by the Maritime Commission. They are also converting one or more tankers to chemical carriers which would reportedly be used as well. Presumably, these ships would be used to back haul the ammonia. Commercial shipping rates from Odessa to U.S. Southeastern or Gulf ports are around $45 per short ton currently.

If the 660,000–1,100,000 short tons per year from 1981–1987 do not produce a netback in sales proceeds to the Soviets of $900,00,000, Occidental is obligated to continue purchases at the rate of 660,000 short tons per year until that amount is reached.

Occidental's sales in the U.S. in 1978 and 1979 averaged about $97–$104 per short ton.[45] The Soviet c.i.f. declared value per short ton averaged $101.11 in 1978 and $88.29 in 1979. Customs declared value per short ton, which is the value that would be used to impose tariffs, was $87.52 in 1978 and $72.66 in 1979.[46] The Soviets are obviously not yet receiving the minimum $92 per short ton in netback sales proceeds at the higher 1.1 million short tons per year level, much less the $140 per ton required at the 660,000 ton per year level. However, U.S. ammonia production costs are estimated to rise from the current average level of $110 per short ton to $275 per short ton by 1985.[47] U.S. prices will necessarily rise due to these increased costs and should allow the Soviets to achieve the necessary return and still sell at prices which allow the level of market penetration required to sell all the pre-determined amounts of ammonia.

While some current contracts apparently include clauses that the customer must pay any tariffs levied on the Soviet imports, this cost, presumably, would be factored into the purchase price in the future since Occidental plans to presell all the ammonia anyway. The Soviets could easily charge $250 per short ton by 1985, since few U.S. producers are willing to sell below their direct production costs. Even with the 15 percent tariff called for in H.R. 7087, the Soviets would net $212.50 and could probably meet the $140 per short ton sales proceeds levels and certainly the $92 per ton level required. To the extent sales proceeds are below those levels now, the Soviets will be forced to insist on the higher volumes to make their loan payments. If anything, the tariff could cause increased volumes of Soviet ammonia imports rather than holding them down at or below current levels.

It could be argued that the Soviets should be allowed to sell enough ammonia here to repay U.S. credits and bank loans. We would not necessarily quarrel with that point. However, only $360 million of this deal is U.S. credits for U.S. supplied goods and services. At least $230 million is to repay French credits for the pipeline construction. Presumably, only about 60 percent of the deal is financed by U.S. credits. Therefore, the minimum volume level of 660,000 short tons would account for the U.S. share of the deal.

The point is the Soviet-Occidental ten year agreement is not governed by market prinicples. Given rising U.S. ammonia production costs and the higher U.S. prices that will result in the future, even with tariffs the U.S. marketplace probably cannot hold down volumes of Soviet ammonia for very long at a safe

[45] Green Markets, Sept. 10, 1979.
[46] Exhibit C.
[47] Schnittker Associates Economic Report, ITC Investigation TA–406–6, Mar. 1, 1980.

level of dependency based on the U.S. industry's ability, or that of other principal foreign exporters to the U.S., to respond to a cut-off of Soviet ammonia imports.

The 20-year agreement

This is a countertrade agreement that is in essence a barter. Occidental sells 1.1 million short tons of superphosphoric acid (SPA) to the Soviets and buys 1.65 million short tons of ammonia, 1.1 million short tons of urea and 1.1 million short tons of potash. Payments are made in cash. "Specific contracts, which set prices applicable for varying periods of time, (will) be negotiated periodically based on market prices." [48] However, the agreements require that the value paid by the Soviets for the SPA not exceed the aggregate value of Occidental's purchases of ammonia under the twenty year agreement, the urea and potash over the entire term of the twenty year agreement. If total twenty year volumes are not varied to balance respective prices—and the intent is clearly just the opposite—the result is a barter.

Obviously Occidental has an incentive to get the highest possible price on the resale of the ammonia, urea and potash, since that ultimately determines how much they make on their SPA sales. They are faced with two problems, however, First, they must resell a pre-determined volume each year, not a certain dollar amount. In the case of ammonia, that is 1.65 million tons. If they were selling against a certain total dollar value negotiated on the sale of the SPA or as determined by world markets for SPA, the result might be different. The volume of ammonia purchased and resold would vary depending on price. That is clearly not the case. They must sell the pre-determined volumes of ammonia, urea and potash, and whatever they get for it is what they ultimately receive for their SPA. The dollars have to equal out at the end.

This raises the second problem. Apparently Occidental only has the exclusive right to sell in the U.S., i.e., the Soviets won't sell to anyone else to resell here. They are apparently restricted on sales to other areas such as Europe. It is our surmise that they have to get approval of the Soviets to divert a sale outside the U.S. It is not clear whether Occidental has the right to negotiate sales elsewhere, but the Soviets typically sell virtually all their production for export on countertrade and compensation deals in pre-determined markets.[49] Thus, we can only assume that the pre-determined volumes of ammonia will be sold here unless restricted by the U.S. Government. Little urea or potash has been sold here yet. The quality has not met U.S. standards. It is not clear how much Soviet urea will ultimately be directed to the U.S. market.

Finally, the total world export market for ammonia as such is relatively small—about 5–6 million metric tons per year. There are few countries other than the U.S. that have a market for ammonia as opposed to other nitrogen fertilizers. Port and handling facilities are not currently available and most countries do not have the distribution and direct application equipment for ammonia, nor do they have enough upgrading facilities to make other nitrogen fertilizers from ammonia. It would take several years and millions of dollars of capital or loans to build such facilities.

Thus, unless tariffs are set at very high levels sufficient to prevent further sales at U.S. price levels, the agreed upon volumes of Soviet ammonia will be sold here by Occidental. These are fixed volume countertrade transactions based on non-market principles. While tariffs can restrict trade in market economies, the ability of tariffs to do so in non-market economies is unproven at best. The net sales proceeds are important but not determinative in the transaction. The volumes are the determinative factor. Thus, it appears that only quotas or negotiated restraints have the certainty of limiting imports from non-market economies in large, long-term countertrade transactions such as the U.S.S.R. Occidential agreements.

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[48] Occidental Petroleum Corporation Form 10–K, filed with the SEC, Mar. 31, 1980, p. 24.
[49] British Sulphur Report, Nitrogen No. 123, January/February 1980, exhibit I.

EXHIBIT A

OUTLOOK FOR
U.S. AMMONIA SUPPLY/DEMAND
CALENDAR YEARS(a)
(000 Short Tons Ammonia Equivalent)

Line No.		(1) 1977	(2) 1978	(3) 1979	(4) 1980F	(5) 1981F	(6) 1982F	(7) 1983F	(8) 1984F	(9) 1985F
					With No Restrictions On U.S. Imports Of Soviet Ammonia(k)					
	U.S. AMMONIA CAPACITY									
(1)	Operating	20,812	20,906	20,563	20,944	21,548	21,764	21,815	21,828	21,986
(2)	Idle(b)	8	1,423	1,992	1,942	1,432	1,381	(m)	(m)	(m)
(3)	Total Capacity	20,820	22,329	22,555	22,886	22,980	23,145	21,815	21,828	21,986
	OPERATING RATE(%)(c)									
(4)	Operating Plants	81%	84%	91%	83%	84%	85%	85%	84%	84%
(5)	Operating + Idle Plants	81	78	83	76	78	80	85	84	84
	U.S. NITROGEN SUPPLY									
	Synthetic Ammonia									
(6)	-Gross Production	17,765	17,188	18,037	17,347	18,035	18,520	18,548	18,291	18,533
(7)	-Inventory (Inc)/Dec	(879)	294	688	-	-	-	-	-	-
(8)	-Net Use	16,886	17,482	18,725	17,347	18,035	18,520	18,548	18,291	18,533
(9)	By-Product Nitrogen(d)	147	140	144	150	150	150	150	150	150
	Nitrogen Imports From:									
(10)	-USSR-Ammonia	-	305	777	1,488	2,315	2,315	2,315	2,315	2,315
(11)	-Urea(e)	-	-	-	(618)	(618)	(618)	(618)	(618)	(618)
(12)	Total USSR	-	305	777	2,106	2,933	2,933	2,933	2,933	2,933
(13)	-Mexico(f)	56	335	309	483	574	690	872	1,008	1,200
(14)	-Canada(g)	1,252	1,256	1,266	1,253	1,194	1,100	1,238	1,840	2,064
(15)	-Trinidad(h)	202	306	356	366	488	731	853	853	853
(16)	-Balance of World	1,001	665	280	226	207	207	244	317	354
(17)	Total Imports(i)	2,511	2,867	2,988	3,816	4,778	5,043	5,522	6,333	6,786
(18)	Total Nitrogen Supply	19,544	20,489	21,857	21,313	22,963	23,713	24,220	24,774	25,469
	U.S. NITROGEN DEMAND									
	Domestic Consumption									
(19)	-Fertilizer(j)	12,343	13,087	13,776	12,859	14,183	14,695	15,110	15,573	16,024
(20)	-Nonfertilizer	3,773	3,982	4,146	4,323	4,524	4,744	4,976	5,226	5,476
(21)	-Process Losses/Unaccounted	1,764	805	701	1,037	1,061	1,091	1,122	1,152	1,189
(22)	Total Domestic	17,880	17,874	18,623	18,219	19,768	20,530	21,208	21,951	22,689
(23)	Exports	1,664	2,615	3,234	3,094	3,195	3,183	3,012	2,823	2,780
(24)	Total Nitrogen Demand	19,544	20,489	21,857	21,313	22,963	23,713	24,220	24,774	25,469

(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	
With U.S. Imports Of Soviet Ammonia Restricted To Level Of 1979(1)						With No U.S. Imports Of Soviet Ammonia						
1980F	1981F	1982F	1983F	1984F	1985F	1980F	1981F	1982F	1533F	1984F	1985F	
												U.S. AMMONIA CAPACITY
20,944	21,548	21,764	21,815	21,828	21,986	20,944	21,548	21,764	21,815	21,828	21,986	Operating
1,942	1,432	1,381	(m)	(m)	(m)	1,942	1,432	1,381	(m)	(m)	(m)	Idle(b)
22,886	22,980	23,145	21,815	21,828	21,986	22,886	22,980	23,145	21,815	21,828	21,986	Total Capacity
86%	91%	92%	92%	91%	91%	90%	94%	96%	96%	94%	95%	OPERATING RATE(%)(c)
79	85	87	92	91	91	82	89	90	96	94	95	Operating Plants
												Operating + Idle Plants
												U.S. NITROGEN SUPPLY
18,058	19,573	20,058	20,086	19,829	20,071	18,835	20,350	20,835	20,863	20,606	20,848	Synthetic Ammonia
-	-	-	-	-	-	-	-	-	-	-	-	-Gross Production
18,058	19,573	20,058	20,086	19,829	20,071	18,835	20,350	20,835	20,863	20,606	20,848	-Inventory (Inc)/Dec
												-Net Use
150	150	150	150	150	150	150	150	150	150	150	150	By-Product Nitrogen(d)
777	777	777	777	777	777	-	-	-	-	-	-	Nitrogen Imports From:
(618)	(618)	(618)	(618)	(618)	(618)	-	-	-	-	-	-	-USSR-Ammonia
1,395	1,395	1,395	1,395	1,395	1,395	-	-	-	-	-	-	-Urea(e)
												Total USSR
483	574	690	872	1,008	1,200	483	574	690	872	1,008	1,200	-Mexico(f)
1,253	1,194	1,100	1,238	1,840	2,064	1,253	1,194	1,100	1,238	1,840	2,064	-Canada(g)
366	488	731	853	853	853	366	488	731	853	853	853	-Trinidad(h)
226	207	207	244	317	354	226	207	207	244	317	354	-Balance of World
3,105	3,240	3,505	3,984	4,795	5,248	2,328	2,463	2,728	3,207	4,018	4,471	Total Imports(i)
21,313	22,963	23,713	24,220	24,774	25,469	21,313	22,963	23,713	24,220	24,774	25,469	Total Nitrogen Supply
												U.S. NITROGEN DEMAND
12,859	14,183	14,695	15,110	15,573	16,024	12,859	14,183	14,695	15,110	15,573	16,024	Domestic Consumption
4,323	4,524	4,744	4,976	5,226	5,476	4,323	4,524	4,744	4,976	5,226	5,476	-Fertilizer(j)
1,037	1,061	1,091	1,122	1,152	1,189	1,037	1,061	1,091	1,122	1,152	1,189	-Nonfertilizer
18,219	19,768	20,530	21,208	21,951	22,689	18,219	19,768	20,530	21,208	21,951	22,689	-Process Losses/Unaccounted
												Total Domestic
3,094	3,195	3,183	3,012	2,823	2,780	3,094	3,195	3,183	3,012	2,823	2,780	Exports
21,313	22,963	23,713	24,220	24,774	25,469	21,313	22,963	23,713	24,220	24,774	25,469	Total Nitrogen Demand

Line No.	Footnote	Column(s)		
	(a)	Title	Sources of Data:	
(1)			History Years (1977-1979)	
(2)				
(3)			Ammonia Capacity	- W. R. Grace & Co. list of U.S. ammonia plants. Individual plant capacities entered @ 103% of nameplate daily production capability, assuming 340 days per year operation. Capacities discounted 25% during first year of operation.
(4)				
(5)			Production, Inventories and Trade	- U.S. Department of Commerce (USDC).
(6)			Fertilizer Consumption	- U.S. Department of Agriculture (USDA).
(7)				
(8)			Nonfertilizer Consumption	- Estimated from reported production of nitrogenous chemicals for industrial use, e.g., explosives, plastics and fibers.
(9)			Process Losses/Unaccounted	- Determined by difference.
(10)				
(11)			Forecast Years (1980-1985)	- Forecasts by W. R. Grace & Co. Year-to-year inventories assumed unchanged; ammonia production determined by difference after projecting all other elements of supply and demand.
(12)				
(13)				
(14)				
(15)	(b)	Left Headings Line (2)	Capacity of idle U.S. ammonia plants, judged capable of being returned to production.	
(16)				
(17)				
(18)	(c)	Left Headings Lines (4),(5)	Operating Rates:	
			Net use of U.S. synthetic ammonia (gross production netted for change in ammonia and converted product inventories). Line 8, divided by estimated effective production capacities (lines 1 and 3).	
(19)				
(20)				
(21)	(d)	Left Headings Line (9)	U.S. production of by-product ammonia liquor and coke oven ammonium sulfate, netted for inventory change, plus consumption of organic fertilizer materials.	
(22)				
(23)				
	(e)	Left Headings Line (11)	Forecast years show Occidental purchase commitment for Soviet urea, expressed in equivalent tons of ammonia, assuming nitrogen contents of 46% for urea and 82% for ammonia. Values shown are not included in projections for total U.S. nitrogen imports, although some or all of the tonnage shown may be brought to the U.S.	
(24)				

Footnote	Column(s)	
(f)	Left Headings Line (13)	Projections assume 50% of Mexican exports shipped to U.S. Past Mexican statements regarding market plans have estimated a 40% share of Mexican exports going to the U.S.
(g)	Left Headings Line (14)	97% of Canadian exports of nitrogen materials in forecast years assumed shipped to U.S. per past experience.
(h)	Left Headings Line (15)	All new Trinidad production of ammonia and derivatives assumed exported to U.S. Past export level of Trinidad nitrogen products to other areas of the world projected to continue.
(i)	Left Headings Line (17)	Projections for total U.S. nitrogen imports (ammonia equivalent) exclude Occidental purchase commitments for Soviet urea (Line 11).
(j)	Left Headings Line (19)	Calendar year values for U.S. nitrogen fertilizer consumption in 1977-1979 developed from USDA data for fertilizer years (ending June 30). Fertilizer years subdivided to Jan-Jun and Jul-Dec in proportion to gross half-year tonnages reported by USDA for direct application fertilizer materials and mixtures. Consumption forecast on fertilizer year basis, then subdivided 67% Jan-Jun/33% previous Jul-Dec, per representative past experience.
(k)	(4)-(9)	U.S. imports of Soviet ammonia projected per USSR-Occidental Trade Agreement, as specified in Occidental 10-K disclosure to U.S. Securities and Exchange Commission for year ending December 31, 1979.
(l)	(10)-(15)	U.S. imports of Soviet ammonia assumed restricted to actual 1979 level, as reported by U.S. Department of Commerce (777,153 short tons).
(m)	(7)-(9), (13)-(15), (19)-21)	Idle capacity not projected beyond 1982, because of uncertainty with respect to length of time producers will be willing to maintain plants presently closed in a manner which will permit reactivation. As a judgment, if such plants have not been returned to operation by the end of calendar 1982 (roughly five years after closure), it is likely that their capacity will be permanently lost.

Prepared by: ADL:es/em 5/3/80
Checked by: ECJ 5/5/80

EXHIBIT 8

IDLE U.S. AMMONIA CAPACITY
(000 Short Tons Ammonia)

Line No.	Company	Location	Mo/Yr Closed	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
				Fertilizer Year (ending June 30)						Calendar Year					
				1977	1978	1979	1980	1981	1982	1977	1978	1979	1980	1981	1982
	JUDGED CAPABLE OF RESTARTING														
(1)	American Oil Co.	Texas City, Texas	2/78	-	88	210	210	210	210	-	193	210	210	210	210
(2)	Beker Industries	Carlsbad, New Mexico	1/78	-	105	210	210	210	210	-	210	210	210	210	210
(3)	Estech	Beaumont, Texas	1/78	-	130	260	260	260	260	-	260	260	260	260	260
(4)	Goodpasture, Inc.	Dimmitt, Texas	5/78	-	5	32	32	32	32	-	21	32	32	32	32
(5)	W. R. Grace & Co.	Big Spring, Texas	12/77	-	60	102	102	102	102	8	102	102	102	102	51
(6)	Int. Minerals & Chem. Co.	Sterlington, Louisiana	6/78	-	32	385	385	193	-	-	225	385	385	-	-
(7)	Kaiser Aluminum & Chem. Co.	Savannah, Georgia	1/79	-	-	37	75	75	75	-	-	75	75	75	75
(8)		Pryor, Oklahoma (Nipak)	8/78	-	-	96	105	52	-	-	44	105	105	-	-
(9)	Occidental Petrol. Corp.	Plainview, Texas	1/79	-	-	26	52	52	52	-	-	52	52	52	52
(10)	Tenneco Chemical Co.	Houston, Texas	7/78	-	-	210	210	210	210	-	105	210	210	210	210
(11)	Tipperary Corporation	Lovington, New Mexico	3/78	-	12	35	35	35	35	-	29	35	35	35	35
(12)		Lovington, New Mexico	3/78	-	23	70	70	70	70	-	58	70	70	70	70
(13)	USA Petrochem Corp.	Ventura, California	3/79	-	-	20	50	-	-	-	-	50	20	-	-
(14)	Valley Nitrogen Producers	Chandler, Arizona	1/79	-	-	20	-	-	-	-	-	20	-	-	-
(15)		Helm, California	1/78	-	44	88	88	88	88	-	88	88	88	88	88
(16)		Helm, California	1/78	-	44	88	88	86	88	-	88	88	88	88	88
(17)	Total - 000 S. Tons Ammonia			-	543	1,889	1,972	1,677	1,432	-8	1,423	1,992	1,942	1,432	1,281
(18)	- 000 S. Tons Nitrogen			-	446	1,549	1,617	1,375	1,175	-7	1,167	1,634	1,593	1,174	1,132
	JUDGED INCAPABLE OF RESTARTING														
(19)	Allied Chemical Corp.	S. Point, Ohio	9/78	-	-	67	80	80	80	-	27	80	80	80	80
(20)		S. Point, Ohio	9/78	-	-	67	80	80	80	-	27	80	80	80	80
(21)		S. Point, Ohio	1/79	-	-	40	80	80	80	-	-	80	80	80	80
(22)	Chevron Chemical Co.	Richmond, California	9/78	-	-	108	130	130	130	-	43	130	130	130	130
(23)	Columbia Nitrogen Corp.	Augusta, Georgia	1/79	-	-	63	126	126	126	-	-	126	126	126	126
(24)	E. I. DuPont De Nemours	Belle, West Virginia	10/78	-	-	262	350	350	350	-	87	350	350	350	350
(25)	Nipak, Inc.(a)	Kerens, Texas	8/78	-	-	124	135	135	135	-	56	135	135	135	135
(26)	Occidental Petrol. Corp.	Hanford, California	5/78	-	4	21	21	21	21	-	14	21	21	21	21
(27)		Hanford, California	5/78	-	4	21	21	21	21	-	14	21	21	21	21
(28)	Occidental Petrol. Corp.	Lathrop, California	7/79	-	-	-	96	96	96	-	-	48	96	96	96
(29)	Rohm & Haas	Deer Park, Texas	7/78	-	-	50	50	50	50	-	25	50	50	50	50
(30)	Valley Nitrogen Producers(a)	Hercules, California	1/78	-	35	70	70	70	70	-	70	70	70	70	70
(31)	Vulcan Materials Co.	Wichita, Kansas	1/79	-	-	17	35	35	35	-	-	35	35	35	35
(32)	Total - 000 S. Tons Ammonia			-	43	910	1,274	1,274	1,274	-	361	1,226	1,274	1,274	1,274
(33)	- 000 S. Tons Nitrogen			-	35	746	1,045	1,045	1,045	-	298	1,005	1,045	1,045	1,045
(34)	GRAND TOTAL - 000 S. Tons Ammonia			-	586	2,799	3,246	2,951	2,706	-8	1,786	3,218	3,216	2,706	2,555
(35)	- 000 S. Tons Nitrogen			-	481	2,295	2,662	2,420	2,219	-7	1,465	2,639	2,637	2,219	2,177

(a) Plants in process of conversion to methanol production.

Prepared by: ADL:DCC:em 4/30/80
Checked by: JHO 4/30/80

EXHIBIT C

QUANTITY AND VALUE OF
U.S. IMPORTS OF ANHYDROUS AMMONIA
FROM THE USSR(A)

LINE NO.	CALENDAR YEAR/MONTH	BY MONTH				CUMULATIVE				$/SHORT TON					
			VALUE - $				VALUE - $			BY MONTH			CUMULATIVE		
										VALUE BASIS			VALUE BASIS		
		(01) QUANTITY SHORT TONS	(02) CUSTOMS(B)	(03) F.A.S.(C)	(04) C.I.F.(B)	(05) QUANTITY SHORT TONS	(06) CUSTOMS(B)	(07) F.A.S.(C)	(08) C.I.F.(D)	(09) CUSTOMS(B)	(10) F.A.S.(C)	(11) C.I.F.(B)	(12) CUSTOMS(B)	(13) F.A.S.(C)	(14) C.I.F.(D)
	1978														
(1)	JANUARY	8,778	$ 865,496	$ 865,496	$ 876,468	8,778	$ 865,496	$ 865,496	$ 876,468	$ 98.60	$ 98.60	$ 99.85	$ 98.60	$ 98.60	$ 99.85
(2)	FEBRUARY	8,802	852,104	852,104	878,350	17,580	1,717,600	1,717,600	1,754,818	96.81	96.81	99.79	97.70	97.70	99.82
(3)	MARCH	16,176	1,527,319	1,527,319	1,615,356	33,756	3,244,919	3,244,919	3,370,174	94.42	94.42	99.86	96.13	96.13	99.84
(4)	APRIL	35,173	3,059,757	3,059,757	3,511,810	68,929	6,304,676	6,304,676	6,881,984	86.99	86.99	99.84	91.47	91.47	99.84
(5)	MAY	25,682	2,601,584	2,601,584	2,637,123	94,611	8,906,260	8,906,260	9,519,107	101.30	101.30	102.68	94.14	94.14	100.61
(6)	JUNE	26,424	2,138,550	2,138,550	2,639,107	121,035	11,044,810	11,044,810	12,158,214	80.93	80.93	99.88	91.25	91.25	100.45
(7)	JULY	43,912	3,745,024	3,745,024	4,385,335	164,947	14,789,834	14,789,834	16,543,549	85.28	85.28	99.87	89.66	89.66	100.30
(8)	AUGUST	17,631	1,360,674	1,359,632	1,759,655	182,578	16,150,508	16,149,466	18,303,204	77.18	77.12	99.80	88.46	88.45	100.25
(9)	SEPTEMBER	42,627	3,799,094	3,796,585	4,419,711	225,205	19,949,602	19,946,051	22,722,915	89.12	89.07	103.68	88.58	88.57	100.90
(10)	OCTOBER	35,220	3,199,904	3,199,904	3,606,836	260,425	23,149,506	23,145,955	26,329,751	90.85	90.85	102.41	88.89	88.88	101.10
(11)	NOVEMBER	17,895	1,379,875	1,379,875	1,787,053	278,320	24,529,381	24,525,830	28,116,804	77.11	77.11	99.86	88.13	88.12	101.02
(12)	DECEMBER	26,468	2,146,611	2,146,611	2,701,559	304,788	26,675,992	26,672,441	30,818,363	81.10	81.10	102.07	87.52	87.51	101.11
(13)	TOTAL FOR 1978	304,788	$ 26,675,992	$ 26,672,441	$ 30,818,363	NA	NA	NA	NA	$ 87.52	$ 87.51	$101.11	NA	NA	NA
	1979														
(14)	JANUARY	33,349	$ 3,128,720	$ 3,128,720	$ 3,377,842	33,349	$ 3,128,720	$ 3,128,720	$ 3,377,842	$ 93.82	$ 93.82	$101.29	$ 93.82	$ 93.82	$101.29
(15)	FEBRUARY	18,449	1,360,986	1,360,986	1,614,734	51,798	4,489,706	4,489,706	4,992,576	73.77	73.77	87.52	86.68	86.68	96.39
(16)	MARCH	62,673	5,023,105	5,023,105	5,481,925	114,471	9,512,811	9,512,811	10,474,503	80.15	80.15	87.47	83.10	83.10	91.50
(17)	APRIL	53,139	3,720,816	3,720,816	4,597,625	167,610	13,233,627	13,233,627	15,072,128	70.02	70.02	86.52	78.95	78.95	89.92
(18)	MAY	55,683	3,422,860	3,422,841	4,465,244	223,293	16,656,487	16,656,468	19,537,372	65.06	65.06	80.19	75.49	75.49	87.50
(19)	JUNE	44,490	2,715,170	2,515,170	3,416,184	267,783	19,571,657	19,371,638	22,953,558	61.03	56.53	76.79	73.09	72.34	85.72
(20)	JULY	53,806	[illegible] 503	4,811,603	5,560,665	321,589	24,383,260	24,183,241	28,514,223	89.43	89.43	103.35	75.82	75.20	88.67
(21)	AUGUST	88,640	[illegible] 00	7,492,700	9,051,297	410,229	31,875,960	31,675,941	37,565,520	84.53	84.53	102.11	77.70	77.22	91.57
(22)	SEPTEMBER	90,656	[illegible] 464	6,683,464	8,307,067	500,885	38,559,424	38,359,405	45,872,587	73.72	73.72	91.63	76.98	76.58	91.58
(23)	OCTOBER	98,841	[illegible] 468	6,806,468	8,427,786	599,726	45,365,892	45,165,873	54,300,373	68.86	68.86	85.27	75.64	75.31	90.54
(24)	NOVEMBER	78,848	[illegible] 749	4,183,749	5,978,472	678,574	49,549,641	49,349,642	60,278,845	53.06	53.06	75.82	73.02	72.73	88.83
(25)	DECEMBER	98,579	6,715,915	6,915,915	8,334,169	777,153	56,465,576	56,265,557	68,613,014	70.16	70.16	84.54	72.66	72.40	88.29
(26)	TOTAL FOR 1979	777,153	$ 56,465,576	$ 56,265,557	$ 68,613,014	NA	NA	NA	NA	$ 72.66	$ 72.40	$ 88.29	NA	NA	NA
	1980														
(27)	JANUARY	83,136	$ 5,844,022	$ 5,844,022	$ 7,224,980	83,136	$ 5,844,022	$ 5,844,022	$ 7,224,980	$ 70.29	$ 70.29	$ 86.91	$ 70.29	$ 70.29	$ 86.91
(28)	FEBRUARY	16,535	1,650,000	1,650,000	2,180,250	99,671	7,494,022	7,494,022	9,405,230	99.79	99.79	131.86	75.19	75.19	94.36

Footnotes	Column(s)	
(a)	Title	U.S. Imports of Anhydrous Ammonia, (Product Code No. 4806540). Sources of data: U.S. Imports for Consumption and General Imports, IM 145-X, U.S. Dept. of Commerce, Bureau of Census, monthly.
(b)	(2),(6) (9),(12)	Customs value is defined as the value of imports as appraised by the Customs Service in accordance with the legal requirements of Sections 402 and 402a of the Tariff Act of 1930, as amended. It may be based on: 1. Foreign market value, 2. Export value, 3. Constructed value or; 4. American selling price.
(c)	(3),(7), (10),(13)	Free alongside ship (f.a.s.) value is defined as the transaction value of imports at the foreign port of exportation and is based on purchase price.
(d)	(4),(8), (11),(14)	Cost, insurance, and freight (c.i.f.) value is defined as the value of imports at the first port of entry in the U.S. and is based on purchase price plus freight, insurance, and other charges, but excluding U.S. import duties.

Prepared by: SJF:c:em 5/1/80
Checked by: SJF 5/1/80

EXHIBIT D

QUANTITY AND VALUE OF
U.S. IMPORTS OF ANHYDROUS AMMONIA FROM THE USSR
BY PORT OF ENTRY(A)

LINE NO.	CALENDAR YEAR/MONTH	PHILADELPHIA, PA. (01) SHORT TONS	VALUE ($) (02) F.A.S.	VALUE ($) (03) C.I.F.	VALUE($/TON) (04) F.A.S.	VALUE($/TON) (05) C.I.F.	SAVANNAH, GA. (06) SHORT TONS	VALUE ($) (07) F.A.S.	VALUE ($) (08) C.I.F.	VALUE($/TON) (09) F.A.S.	VALUE($/TON) (10) C.I.F.
	1978										
(1)	JANUARY	-	-	-	-	-	-	-	-	-	-
(2)	FEBRUARY	-	-	-	-	-	-	-	-	-	-
(3)	MARCH	-	-	-	-	-	-	-	-	-	-
(4)	APRIL	-	-	-	-	-	-	-	-	-	-
(5)	MAY	-	-	-	-	-	-	-	-	-	-
(6)	JUNE	-	-	-	-	-	-	-	-	-	-
(07)	JAN-JUNE	-	-	-	-	-	-	-	-	-	-
(8)	JULY	-	-	-	-	-	-	-	-	-	-
(9)	AUGUST	-	-	-	-	-	-	-	-	-	-
(10)	SEPTEMBER	-	-	-	-	-	-	-	-	-	-
(11)	OCTOBER	-	-	-	-	-	-	-	-	-	-
(12)	NOVEMBER	-	-	-	-	-	-	-	-	-	-
(13)	DECEMBER	17,640	$ 1,466,105	$ 1,820,006	$ 83.11	$ 103.17	9,472	$ 745,446	$ 965,886	$ 77.07	$ 99.86
		-	-	-	-	-	-	-	-	-	-
(14)	JULY-DEC	17,640	$ 1,466,105	$ 1,820,006	$ 83.11	$ 103.17	9,472	$ 745,446	$ 965,886	$ 77.07	$ 99.86
(15)	TOTAL FOR 1978	17,640	$ 1,466,105	$ 1,820,006	$ 83.11	$ 103.17	9,472	$ 745,446	$ 965,886	$ 77.07	$ 99.86
	1979										
(16)	JANUARY	-	-	-	-	-	-	-	-	-	-
(17)	FEBRUARY	8,057	$ 852,030	$ 887,460	$ 96.20	$ 100.20	8,827	$ 678,436	$ 879,274	$ 76.86	$ 99.61
(18)	MARCH	-	-	-	-	-	9,592	508,956	727,276	53.06	75.82
(19)	APRIL	-	-	-	-	-	8,824	467,901	669,093	53.03	75.83
(20)	MAY	-	-	-	-	-	34,251	2,203,014	2,977,269	64.32	86.92
(21)	JUNE	-	-	-	-	-	-	-	-	-	-
(22)	JAN-JUNE	8,057	$ 852,030	$ 887,460	$ 96.20	$ 100.20	26,600	1,409,345	2,016,938	52.98	75.82
(23)	JULY	-	-	-	-	-	88,094	$ 5,267,652	$ 7,269,790	$ 59.80	$ 82.52
(24)	AUGUST	-	-	-	-	-	8,778	$ 706,593	$ 907,233	$ 80.50	$ 103.35
(25)	SEPTEMBER	8,033	$ 881,320	$ 912,145	$ 99.78	$ 103.27	27,176	2,190,628	2,808,910	80.61	103.36
(26)	OCTOBER	-	-	-	-	-	20,146	1,499,187	2,134,065	53.26	75.82
(27)	NOVEMBER	8,086	471,576	673,749	53.07	75.82	47,117	2,709,800	3,782,873	57.51	80.29
(28)	DECEMBER	-	-	-	-	-	10,489	555,964	795,319	53.00	75.82
(29)	JULY-DEC	17,719	$ 1,352,896	$ 1,585,894	$ 76.35	$ 89.50	121,706	$ 7,662,172	$ 10,428,400	$ 62.96	$ 85.69
(30)	TOTAL FOR 1979	26,576	$ 2,204,926	$ 2,473,354	$ 82.97	$ 93.07	209,800	$ 12,929,824	$ 17,698,190	$ 61.63	$ 84.36
	1980										
(31)	JANUARY	10,492	$ 556,065	$ 794,776	$ 53.00	$ 75.75	24,544	$ 1,656,817	$ 2,157,617	$ 67.47	$ 87.91
(32)	FEBRUARY	-	-	-	-	-	-	-	-	-	-

LINE NO.	CALENDAR YEAR/MONTH	TAMPA, FLA. (11) SHORT TONS	VALUE ($) (12) F.A.S.	VALUE ($) (13) C.I.F.	VALUE($/TON) (14) F.A.S.	VALUE($/TON) (15) C.I.F.	MOBILE, ALA. (16) SHORT TONS	VALUE ($) (17) F.A.S.	VALUE ($) (18) C.I.F.	VALUE($/TON) (19) F.A.S.	VALUE($/TON) (20) C.I.F.
	1978										
(1)	JANUARY	8,770	$ 865,496	$ 876,468	$ 98.60	$ 99.85	-	-	-	-	-
(2)	FEBRUARY	8,802	852,104	878,350	96.81	99.79	-	-	-	-	-
(3)	MARCH	-	-	-	-	-	-	-	-	-	-
(4)	APRIL	17,580	1,597,926	1,754,984	90.89	99.83	-	-	-	-	-
(5)	MAY	16,926	1,740,668	1,762,703	102.84	104.14	-	-	-	-	-
(6)	JUNE	8,792	866,326	878,242	98.54	99.89	-	-	-	-	-
(07)	JAN-JUNE	60,878	$ 5,922,520	$ 6,150,747	$ 97.29	$ 101.03	-	-	-	-	-
(8)	JULY	17,554	$ 1,729,264	$ 1,753,050	$ 98.51	$ 99.87	-	-	-	-	-
(9)	AUGUST	-	-	-	-	-	-	-	-	-	-
(10)	SEPTEMBER	16,243	1,674,466	1,697,506	103.09	104.51	-	-	-	-	-
(11)	OCTOBER	17,653	1,738,978	1,762,898	98.51	99.86	-	-	-	-	-
(12)	NOVEMBER	-	-	-	-	-	-	-	-	-	-
(13)	DECEMBER	-	-	-	-	-	-	-	-	-	-
(14)	JULY-DEC	51,450	$ 5,142,708	$ 5,213,454	$ 99.96	$ 101.33	-	-	-	-	-
(15)	TOTAL FOR 1978	112,328	$ 11,065,228	$ 11,364,201	$ 98.51	$ 101.17	-	-	-	-	-
	1979										
(16)	JANUARY	16,232	$ 1,648,659	$ 1,670,703	$ 101.57	$ 102.93	-	-	-	-	-
(17)	FEBRUARY	-	-	-	-	-	-	-	-	-	-
(18)	MARCH	45,005	3,842,751	3,898,726	85.38	86.63	-	-	-	-	-
(19)	APRIL	9,267	943,117	957,809	101.77	103.36	-	-	-	-	-
(20)	MAY	12,137	902,283	920,270	74.34	75.82	9,702	$ 505,933	$ 735,662	$ 52.15	$ 75.83
(21)	JUNE	9,072	474,435	487,080	52.30	53.70	-	-	-	-	-
(22)	JAN-JUNE	91,713	$ 7,811,245	$ 7,935,388	$ 85.17	$ 86.52	9,702	$ 505,933	$ 735,662	$ 52.15	$ 75.83
(23)	JULY	22,920	$ 2,335,397	$ 2,368,999	$ 101.89	$ 103.36	-	-	-	-	-
(24)	AUGUST	22,367	2,251,123	2,311,853	100.64	103.36	4,489	$ 351,320	$ 455,720	$ 78.28	$ 101.51
(25)	SEPTEMBER	12,397	1,263,332	1,281,270	101.91	103.35	-	-	-	-	-
(26)	OCTOBER	28,759	2,138,383	2,180,628	74.36	75.82	-	-	-	-	-
(27)	NOVEMBER	-	-	-	-	-	23,154	1,228,791	1,755,596	53.07	75.82
(28)	DECEMBER	45,253	3,529,724	3,734,684	78.00	82.53	-	-	-	-	-
(29)	JULY-DEC	131,696	$ 11,517,959	$ 11,877,434	$ 87.46	$ 90.19	27,643	$ 1,580,111	$ 2,211,316	$ 57.33	$ 80.23
(30)	TOTAL FOR 1979	223,409	$ 19,329,204	$ 19,812,822	$ 86.52	$ 88.68	37,345	$ 2,086,044	$ 2,946,978	$ 55.98	$ 79.08
	1980										
(31)	JANUARY	25,545	$ 2,118,107	$ 2,245,649	$ 82.92	$ 87.91	-	-	-	-	-
(32)	FEBRUARY	-	-	-	-	-	-	-	-	-	-

LINE NO.	CALENDAR YEAR/MONTH	NEW ORLEANS, LA.					SAN FRANCISCO, CA.				
			VALUE ($)		VALUE($/TON)			VALUE ($)		VALUE($/TON)	
		(21) SHORT TONS	(22) F.A.S.	(23) C.I.F.	(24) F.A.S.	(25) C.I.F.	(26) SHORT TONS	(27) F.A.S.	(28) C.I.F.	(29) F.A.S.	(30) C.I.F.
	1978										
(1)	JANUARY	-	-	-	-	-	-	-	-	-	-
(2)	FEBRUARY	-	-	-	-	-	-	-	-	-	-
(3)	MARCH	7,384	$ 725,974	$ 737,361	$ 98.32	$ 99.86	-	-	-	-	-
(4)	APRIL	-	-	-	-	-	-	-	-	-	-
(5)	MAY	8,756	860,916	874,420	98.32	99.87	-	-	-	-	-
(6)	JUNE	8,831	401,475	881,864	68.11	99.86	-	-	-	-	-
(07)	JAN-JUNE	24,971	$ 2,188,365	$ 2,493,645	$ 87.64	$ 99.86	-	-	-	-	-
(8)	JULY	-	-	-	-	-	-	-	-	-	-
(9)	AUGUST	-	-	-	-	-	-	-	-	-	-
(10)	SEPTEMBER	-	-	-	-	-	-	-	-	-	-
(11)	OCTOBER	-	-	-	-	-	-	-	-	-	-
(12)	NOVEMBER	-	-	-	-	-	-	-	-	-	-
(13)	DECEMBER	-	-	-	-	-	-	-	-	-	-
(14)	JULY-DEC	-	-	-	-	-	-	-	-	-	-
(15)	TOTAL FOR 1978	24,971	$ 2,188,365	$ 2,493,645	$ 87.64	$ 99.86	-	-	-	-	-
	1979										
(16)	JANUARY	-	-	-	-	-	-	-	-	-	-
(17)	FEBRUARY	-	-	-	-	-	-	-	-	-	-
(18)	MARCH	-	-	-	-	-	-	-	-	-	-
(19)	APRIL	-	-	-	-	-	-	-	-	-	-
(20)	MAY	9,039	$ 398,350	$ 685,343	$ 44.07	$ 75.82	-	-	-	-	-
(21)	JUNE	8,818	631,390	911,368	71.60	103.35	-	-	-	-	-
(22)	JAN-JUNE	17,857	$ 1,029,740	$ 1,596,711	$ 57.67	$ 89.42	-	-	-	-	-
(23)	JULY	-	-	-	-	-	-	-	-	-	-
(24)	AUGUST	8,478	$ 373,629	$ 642,814	$ 44.07	$ 75.82	26,210	$ 2,326,000	$ 2,832,000	$ 88.74	$ 108.05
(25)	SEPTEMBER	11,023	888,300	1,139,300	80.59	103.36	-	-	-	-	-
(26)	OCTOBER	-	-	-	-	-	22,965	1,958,285	2,464,285	85.27	107.31
(27)	NOVEMBER	11,023	585,000	835,000	53.07	75.82	-	-	-	-	-
(28)	DECEMBER	33,069	1,753,400	2,505,000	53.02	75.77	-	-	-	-	-
(29)	JULY-DEC	63,593	$ 3,600,329	$ 5,123,714	$ 56.62	$ 80.57	49,175	$ 4,284,285	$ 5,296,285	$ 87.12	$ 107.70
(30)	TOTAL FOR 1979	81,450	$ 4,630,069	$ 6,720,425	$ 56.85	$ 82.51	49,175	$ 4,284,285	$ 5,296,285	$ 87.12	$ 107.70
	1980										
(31)	JANUARY	11,023	$ 584,200	$ 835,000	$ 53.00	$ 75.75	-	-	-	-	-
(32)	FEBRUARY	-	-	-	-	-	-	-	-	-	-

LINE NO.	CALENDAR YEAR/MONTH	HOUSTON, TEX. (31) SHORT TONS	HOUSTON, TEX. VALUE ($) (32) F.A.S.	HOUSTON, TEX. VALUE ($) (33) C.I.F.	HOUSTON, TEX. VALUE($/TON) (34) F.A.S.	HOUSTON, TEX. VALUE($/TON) (35) C.I.F.	PORTLAND, ORE. (36) SHORT TONS	PORTLAND, ORE. VALUE ($) (37) F.A.S.	PORTLAND, ORE. VALUE ($) (38) C.I.F.	PORTLAND, ORE. VALUE($/TON) (39) F.A.S.	PORTLAND, ORE. VALUE($/TON) (40) C.I.F.
	1978										
(1)	JANUARY	-	-	-	-	-	-	-	-	-	-
(2)	FEBRUARY	-	-	-	-	-	-	-	-	-	-
(3)	MARCH	8,792	$ 801,345	$ 877,995	$ 91.14	$ 99.86	-	-	-	-	-
(4)	APRIL	17,593	1,461,831	1,756,826	83.09	99.86	-	-	-	-	-
(5)	MAY	-	-	-	-	-	-	-	-	-	-
(6)	JUNE	8,801	670,719	879,001	76.21	99.88	-	-	-	-	-
(07)	JAN-JUNE	35,186	$ 2,933,925	$ 3,513,822	$ 83.38	$ 99.86	-	-	-	-	-
(8)	JULY	26,358	$ 2,015,760	$ 2,632,285	$ 76.48	$ 99.87	-	-	-	-	-
(9)	AUGUST	17,631	1,359,632	1,759,655	77.12	99.80	-	-	-	-	-
(10)	SEPTEMBER	26,384	2,122,119	2,722,295	80.43	103.18	-	-	-	-	-
(11)	OCTOBER	17,567	1,460,926	1,843,938	83.16	104.97	-	-	-	-	-
(12)	NOVEMBER	8,223	634,429	821,167	77.15	99.86	-	-	-	-	-
(13)	DECEMBER	8,828	680,506	881,553	77.08	99.86	-	-	-	-	-
(14)	JULY-DEC	104,991	$ 8,273,372	$ 10,660,803	$ 78.80	$ 101.54	-	-	-	-	-
(15)	TOTAL FOR 1978	140,177	$ 11,207,297	$ 14,174,625	$ 79.95	$ 101.12	-	-	-	-	-
	1979										
(16)	JANUARY	8,290	$ 801,625	$ 827,865	$ 96.70	$ 99.86	-	-	-	-	-
(17)	FEBRUARY	-	-	-	-	-	-	-	-	-	-
(18)	MARCH	8,844	712,453	914,106	80.56	103.36	-	-	-	-	-
(19)	APRIL	9,621	574,685	662,607	59.73	68.87	-	-	-	-	-
(20)	MAY	24,805	1,816,275	2,123,969	73.22	85.63	-	-	-	-	-
(21)	JUNE	-	-	-	-	-	-	-	-	-	-
(22)	JAN-JUNE	51,560	$ 3,905,038	$ 4,528,547	$ 75.74	$ 87.83	-	-	-	-	-
(23)	JULY	22,108	$ 1,769,613	$ 2,284,433	$ 80.04	$ 103.33	-	-	-	-	-
(24)	AUGUST	-	-	-	-	-	-	-	-	-	-
(25)	SEPTEMBER	30,257	2,151,325	2,840,287	71.10	93.87	-	-	-	-	-
(26)	OCTOBER	-	-	-	-	-	-	-	-	-	-
(27)	NOVEMBER	25,296	1,342,438	1,918,008	53.07	75.82	-	-	-	-	-
(28)	DECEMBER	20,257	1,632,791	2,093,685	80.60	103.36	-	-	-	-	-
(29)	JULY-DEC	97,918	$ 6,896,167	$ 9,136,413	$ 70.43	$ 93.31	-	-	-	-	-
(30)	TOTAL FOR 1979	149,478	$ 10,801,205	$ 13,664,960	$ 72.26	$ 91.42	-	-	-	-	-
	1980										
(31)	JANUARY	11,532	$ 929,553	$ 1,191,938	$ 80.61	$ 103.36	-	-	-	-	-
(32)	FEBRUARY	-	-	-	-	-	16,535	$1,650,000	$2,180,250	$99.79	$131.86

CALENDAR YEAR/MONTH	LINE NO.	TOTAL (41) SHORT TONS	TOTAL VALUE ($) (42) F.A.S.	TOTAL VALUE ($) (43) C.I.F.	VALUE ($/TON) (44) F.A.S.	VALUE ($/TON) (45) C.I.F.
1978						
JANUARY	(1)	8,778	$ 865,496	$ 874,468	$ 98.60	$ 99.85
FEBRUARY	(2)	8,802	852,104	878,350	96.81	99.79
MARCH	(3)	16,176	1,527,319	1,615,356	94.42	99.86
APRIL	(4)	35,173	3,059,757	3,511,810	86.99	99.84
MAY	(5)	25,682	2,601,584	2,637,123	101.30	102.68
JUNE	(6)	26,424	2,138,550	2,639,107	80.93	99.88
JAN-JUNE	(07)	121,035	$ 11,044,810	$ 12,158,214	$ 91.25	$ 100.45
JULY	(8)	47,912	$ 3,745,024	$ 4,385,335	$ 85.28	$ 99.87
AUGUST	(9)	17,631	1,359,632	1,759,655	77.12	99.80
SEPTEMBER	(10)	42,627	3,796,585	4,419,711	89.07	103.68
OCTOBER	(11)	35,220	3,199,904	3,606,836	90.85	102.41
NOVEMBER	(12)	17,895	1,379,875	1,787,053	77.11	99.86
DECEMBER	(13)	26,468	2,146,611	2,701,559	81.10	102.07
JULY-DEC	(14)	183,753	$ 15,627,631	$ 18,660,149	$ 85.05	$ 101.55
TOTAL FOR 1978	(15)	304,788	$ 26,672,441	$ 30,818,363	$ 87.51	$ 101.11
1979						
JANUARY	(16)	33,349	$ 3,128,720	$ 3,377,842	$ 93.82	$ 101.29
FEBRUARY	(17)	18,449	1,360,986	1,614,736	73.77	87.52
MARCH	(18)	62,673	5,023,105	5,481,925	80.15	87.47
APRIL	(19)	53,139	3,720,816	4,597,625	70.02	86.52
MAY	(20)	55,683	3,622,841	4,465,244	65.06	80.19
JUNE	(21)	44,490	2,515,170	3,416,186	56.53	76.79
JAN-JUNE	(22)	267,783	$ 19,371,638	$ 22,953,558	$ 72.34	$ 85.72
JULY	(23)	53,006	$ 4,811,603	$ 5,560,665	$ 89.43	$ 103.35
AUGUST	(24)	80,640	7,492,700	9,051,297	84.53	102.11
SEPTEMBER	(25)	90,656	6,683,464	8,307,067	73.72	91.63
OCTOBER	(26)	98,841	6,806,468	8,427,786	68.86	85.27
NOVEMBER	(27)	78,848	4,183,769	5,978,472	53.06	75.82
DECEMBER	(28)	98,579	6,915,915	8,334,169	70.16	84.54
JULY-DEC	(29)	509,370	$ 36,893,919	$ 45,659,456	$ 72.43	$ 89.64
TOTAL FOR 1979	(30)	777,153	$ 56,265,557	$ 68,613,014	$ 72.40	$ 88.29
1980						
JANUARY	(31)	83,136	$ 5,844,022	$ 7,224,980	$ 70.29	$ 86.91
FEBRUARY	(32)	14,535	1,450,000	2,180,250	99.79	131.86

Footnotes	Column(s)	
(a)	Title	U.S. Imports of Anhydrous Ammonia, (Product Code No. 4806540).

Sources of data:

U.S. Imports of Consumption and General Imports, IM 145-X, U.S. Dept. of Commerce, Bureau of Census, monthly.

FAS (Free alongside ship) value is defined as the transaction value of imports at the foreign port of exportation and is based on purchase price.

CIF (Cost, insurance, and freight) value is defined as the value of imports at the first port of entry in the U.S. and is based on purchase price plus freight, insurance, and other charges, but excluding U.S. import duties.

Prepared by. SJF:cem 5/1/80
Checked by: SJF 5/1/80

EXHIBIT E

POTENTIAL U.S. IMPORTS
OF AMMONIA BASED MATERIALS FROM
CANADA, TRINIDAD, AND MEXICO(a)
(000 Short Tons Ammonia Equivalent)

Line No.	Calendar Year	(1) Number of Ammonia Plants (Midyear)	(2) Effective Ammonia Capacity(c)	(3) Ammonia Production 000 Tons	(4) Ammonia Production % (d)	(5) Domestic Consumption	(6) External Trade Exports	(7) External Trade (Imports)	(8) External Trade Net Exports/ (Imports)	(9) Exports To U.S. Maximum Potential(e) 000 Tons	(10) Exports To U.S. Maximum Potential(e) Inc/(Dec) From 1979	(11) Exports To U.S. Probable(f) 000 Tons	(12) Exports To U.S. Probable(f) Inc/(Dec) From 1979
						CANADA							
(1)	1979A	15	2,833	2,657	94%	1,609	1,305	(257)	1,048	1,266	-	1,266	-
(2)	1980F	15	2,833	2,663	94	1,631	1,292	(260)	1,032	1,292	26	1,253	(13)
(3)	1981F	15	2,833	2,663	94	1,692	1,231	(260)	971	1,231	(35)	1,194	(72)
(4)	1982F	15	2,833	2,663	94	1,789	1,134	(260)	874	1,134	(132)	1,100	(166)
(5)	1983F	17	3,076	2,891	94	1,875	1,276	(260)	1,016	1,276	10	1,238	(28)
(6)	1984F	19	3,866	3,634	94	1,997	1,897	(260)	1,637	1,897	631	1,840	574
(7)	1985F	19	4,254	3,999	94	2,131	2,128	(260)	1,868	2,128	862	2,064	798
						TRINIDAD							
(8)	1979E	2	663	520	78%	7	513	-	513	356	-	356	-
(9)	1980F	2	663	530	80	7	523	-	523	523	167	366	10
(10)	1981F	4	815	652	80	7	645	-	645	645	289	488	132
(11)	1982F	4	1,119	895	80	7	888	-	888	888	532	731	375
(12)	1983F	4	1,271	1,017	80	7	1,010	-	1,010	1,010	654	853	497
(13)	1984F	4	1,271	1,017	80	7	1,010	-	1,010	1,010	654	853	497
(14)	1985F	4	1,271	1,017	80	7	1,010	-	1,010	1,010	654	853	497
						MEXICO							
(15)	1979E	10	2,212	1,791	81%	1,303	708	(220)	488	309	-	309	-
(16)	1980F	10	2,377	2,211	93	1,416	965	(170)	795	965	656	483	174
(17)	1981F	11(b)	2,756	2,563	93	1,536	1,147	(120)	1,027	1,147	838	574	265
(18)	1982F	11(b)	3,202	2,978	93	1,668	1,380	(70)	1,310	1,380	1,071	690	381
(19)	1983F	13(b)	3,746	3,484	93	1,800	1,744	(60)	1,684	1,744	1,435	872	563
(20)	1984F	13(b)	4,192	3,899	93	1,944	2,015	(60)	1,955	2,015	1,706	1,008	699
(21)	1985F	15(b)	4,736	4,404	93	2,064	2,400	(60)	2,340	2,400	2,091	1,200	891
						TOTAL - CANADA, TRINIDAD, AND MEXICO							
(22)	1979E	27	5,708	4,968	87%	2,919	2,526	(477)	2,049	1,931	-	1,931	-
(23)	1980F	27	5,873	5,404	92	3,054	2,780	(430)	2,350	2,780	849	2,102	171
(24)	1981F	30	6,404	5,878	92	3,235	3,023	(380)	2,643	3,023	1,092	2,256	325
(25)	1982F	30	7,154	6,536	91	3,464	3,402	(330)	3,072	3,402	1,471	2,521	590
(26)	1983F	34	8,093	7,392	91	3,682	4,030	(320)	3,710	4,030	2,099	2,963	1,032
(27)	1984F	36	9,329	8,550	92	3,948	4,922	(320)	4,602	4,922	2,991	3,701	1,770
(28)	1985F	38	10,261	9,420	92	4,202	5,538	(320)	5,218	5,538	3,607	4,117	2,186

POTENTIAL U.S. IMPORTS OF AMMONIA BASED MATERIALS FROM CANADA, TRINIDAD, AND MEXICO(a)
(000 Short Tons Ammonia Equivalent)

Footnotes	Column(s)	
(a)	Title	Nitrogen content of ammonia based materials produced and traded for fertilizer and industrial use; expressed in terms of equivalent tons of anhydrous ammonia, containing 82% nitrogen.
(b)	(1)	Number of operating Mexican ammonia plants expected after closure of one plant of 66,000 tons/yr capacity at Cosoleacaque in January 1981. Addition of two new 1,500 short ton per day plants in prospect during 1981 (presently under construction); two additional plants of same size assumed brought onstream in 1983 and two in 1985 (planned, but not yet contracted).
(c)	(2)	Effective ammonia capacities estimated from W. R. Grace & Co. world plant list. Canadian capacities assume 340 days per year operation @ 103% of nameplate daily capacity, with 25% discount during first year onstream. Mexican capacities assume 330 days per year operation @ 100% of nameplate daily capacity, with 40% discount during first year onstream. New Fertrin plants in Trinidad (2) entered assuming 330 days per year operation @ 80% of nameplate daily capacity, with 50% discount during first year onstream.
(d)	(4)	Operating rates (production divided by capacity) projected in high range of past experience.
(e)	(9),(10)	Maximum potential exports of ammonia based products to U.S. Values shown assume plant operation in keeping with most favorable past experience, and all exports from countries in question coming to the U.S.
(f)	(11),(12)	Probable level of nitrogen exports to U.S. Assumptions are: 1) that 97% of Canadian exports will be directed to the U.S. per past experience; 2) that exports from Trinidad to other areas of the world will continue as in the past while all new production comes to the U.S.; 3) that 50% of Mexican exports will be directed to the U.S.

Prepared by: ADL:em 5/4/80
Checked by: ECJ 5/5/80

EXHIBIT F

YEAR-TO-YEAR
CHANGE IN U.S.
ANHYDROUS AMMONIA CAPACITY(a)
(000 Short Tons Ammonia)

Line No.	Calendar Year	(1) Effective U.S. Ammonia Capacity	(2) Inc/(Dec) In Capacity From Prior Year: Plant Additions	(3) Inc/(Dec) In Capacity From Prior Year: Plant Closures	(4) Inc/(Dec) In Capacity From Prior Year: Total
(1)	1974	17,395	392	(377)	15
(2)	1975	18,165	770	-	770
(3)	1976	18,855	751	(61)	690
(4)	1977	20,812	2,187	(230)	1,957
(5)	1978	20,906	1,865	(1,771)	94
(6)	1979	20,563	1,109	(1,452)	(343)
(7)	1980E	20,944	439	(58)	381
(8)	1981F	21,548	604	-	604
(9)	1982F	21,764	216	-	216
(10)	1983F	21,815	51	-	51
(11)	1984F	21,828	13	-	13
(12)	1985F	21,986	158	-	158

(a) Source - W. R. Grace & Co.

Prepared by: ADL/DCC:kb 5/2/80
Checked by: ECJ 5/2/80

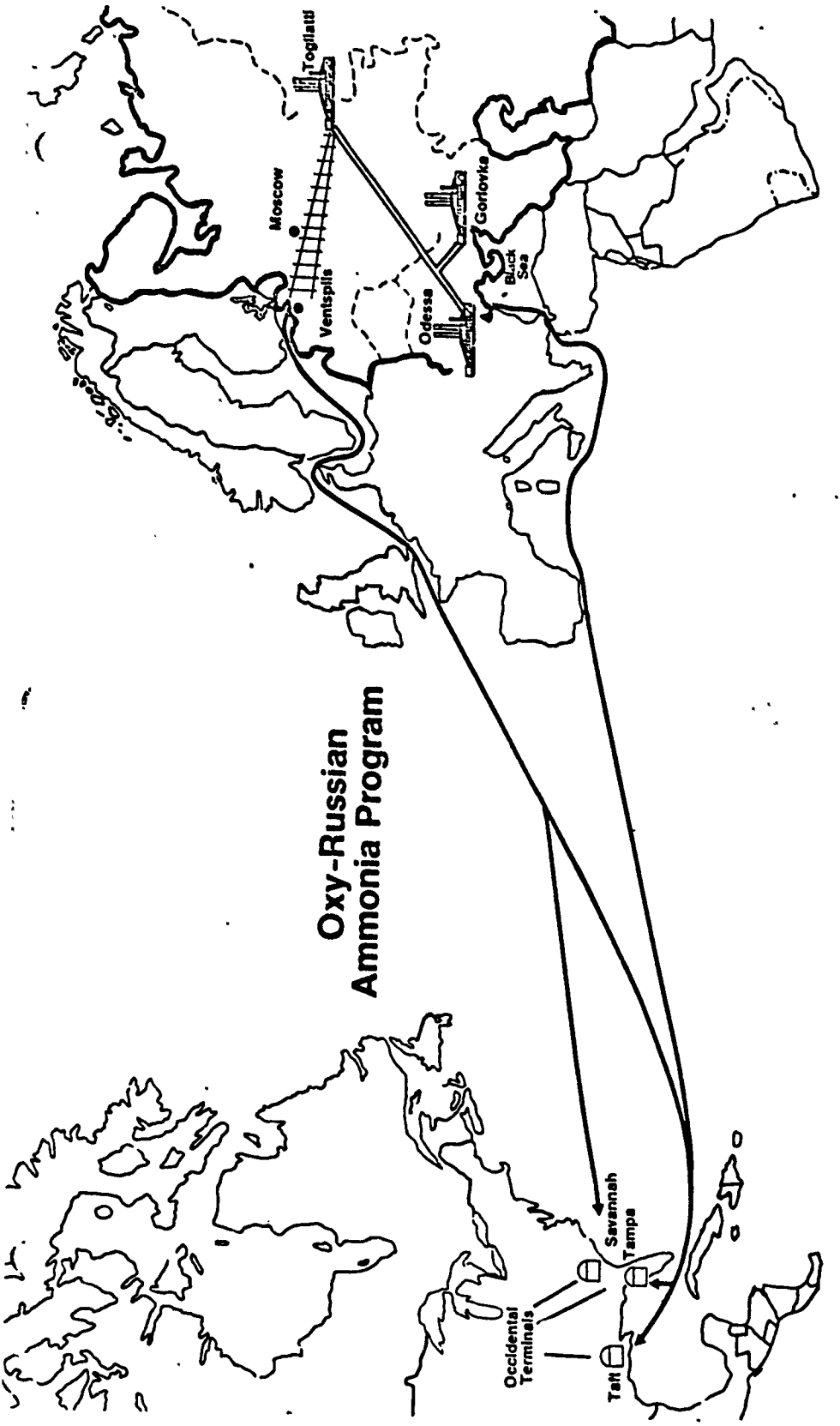
ESTIMATED USSR NETBACK ON AMMONIA SALES TO OCCIDENTAL 1978

	$/Ton
Sales Price[1]	$101
Less:	
Ocean Freight	38
Terminal Cost at Odessa	8
Pipeline to Odessa	15
Cost of Production Excluding Gas[2]	48
Net Profit (Loss) to USSR Before Gas Cost	$ (8)

[1] 1978 Customs Value

[2] Including Interest and Depreciation

EXHIBIT 9


Oxy-Russian
Ammonia Program
Togliatti
Moscow
Ventspils
Odessa
Gorlovka
Black Sea
Savannah
Tampa
Occidental Terminals
Taft

IMPACT OF OCCIDENTAL AMMONIA AND UREA IMPORTS ON U.S. NATURAL GAS RESERVES

	Natural Gas (Trillion CF)
Proven U.S. Gas Reserves	208.9
Implied increase due to USSR ammonia and urea	2.0
Total	210.9
1977 Gas Production	19.4
Years of Reserves	10.77
Extended Years of Reserves	10.87
Extended Life	37 Days

EXHIBIT H

Ammonia costs linked to gas prices

BRIAN PRENTICE
President
Agrichemicals Economic Research
Vancouver, B.C.

Following are some of the conclusions reached in a recently completed analysis of the U.S. and world ammonia industries by Agrichemicals Economic Research, Vancouver. All costs are in 1980 U.S. dollars; tonnages are metric.

Table 1

NH_3 production cost summary $US 1980/metric ton NH_3

	Average in 1974	New plant in 1980	New plant in 1983
Variable costs			
Natural gas	$34.00	$ 78.75	$128.00
Other variable*	4.00	3.20	3.20
Semivariable costs			
All costs†	17.75	15.35	14.80
Fixed costs			
POGO†	11.20	23.45	33.70
Depreciation	7.20	23.50	32.35
Return on investment	14.70	52.90	64.70
Required FOB price/ton NH_3	80.85	197.25	276.75

Notes. *Includes boiler feed and cooling water, electricity, catalysts and chemicals. †Includes labor, labor overhead, and maintenance costs. ‡Includes plant overheads, taxes, insurance, interest on borrowed capital, and interest on working capital.

All costs have been rounded for convenience. All costs are in 1980 dollars. General inflationary cost increases have been deducted. Capital costs do not incorporate calculation of government taxation credits.

RAPIDLY ESCALATING natural gas prices, and all energy prices, are having a traumatic impact on feedstock costs in the chemical process industry. Generally, the direct impact of soaring gas prices is reduced by the relatively low cost component which feedstock represents in overall production costs.

This is not the case, however, with the world. This has caused the North American ammonia industry, in many instances, to suffer crippling production cost increases. About 4% of U.S. natural gas consumption goes into ammonia synthesis which in turn, is used in the downstream manufacture of various nitrogen fertilizers. About 85% of ammonia (NH_3) is consumed for fertilizer manufacture; the remainder is used in explosives, nonprotein nitrogen animal feedstock, and fibers and plastics.

The U.S. NH_3 industry is unquestionably the most economically sensitive of any major industry to the continued dramatic escalation of natural gas prices, because NH_3 process costs comprise a very substantial component of overall production costs.

Because of this, the industry is experiencing dramatic price escalation. For the past 3 years, it has been subjected to volatile internal and external competitive pressures.

Table 1 shows the impact of soaring natural gas prices on NH_3 operating costs. These calculations are based on 1,150 standard ton/d (1,035 metric ton/d) centrifugal compressor unit employing the catalytic steam reforming process. For this analysis, natural gas consumption is assumed at 40 million BTU/ton as average for units in operation in 1974.

Natural gas consumption in the series of new plants commissioned during 1975-77 is averaged at 35 MMBTU/ton. Plants projected for 1983-85 commissioning are assumed to consume about 32 MMBTU/ton. Average plants in operation during 1974 consumed about 25 MMBTU as feedstock, and 15 MMBTU as process fuel in the reforming and steam generation stages.

Exothermic reaction in the NH_3 synthesis loop contributes an energy credit of about 3 MMBTU. Since the mid-1960s, new energy-saving technology has led to a substantial reduction in energy requirements.

Average natural gas costs into NH_3 units in 1974 were $0.85/Mcf ($1980), whereas those for facilities commissioned during 1975-77 are estimated at $2.25/Mcf. New plants commissioned during 1983-85 will likely be required to contract for gas at about $4.00/Mcf ($1980).

Although many producers have been protected from violent gas price escalation by the existence of long term gas supply contracts, the progressive expiry, or redetermination, of these contracts is expected to be substantially completed by 1982.

During the last expansionary phase, U.S. NH_3 capacity expanded from about 15.5 million ton to almost 20 million ton. Since that time, severe cost pressures have forced the closure of about 1.8 million ton capacity.

As Table 1 indicates, the real costs of producing NH_3, on average, have more than doubled over the past 6 years. Importantly, the accounting principles used in these calculations represent total corporate costs. Cost increases in the table, of course, have also been calculated to exclude the apparent cost escalation contributed by general inflation.

A further massive cost increase is forecast to occur over the 1980-82 period, when the first projected plants for the next plant construction cycle will likely be announced.

Natural gas costs in the total matrix have expanded by over 250% since 1974, as average gas prices into plant have increased from an estimated $0.48/Mcf to the current estimated average of $2.25/Mcf. Most natural gas into plant is, of course, purchased intrastate.

Natural gas prices into NH_3 plants now average between $1.25-2.00, although several consumers are purchasing gas well beyond both limits of these extremes. For purposes of feedstock supply security, virtually all new NH_3 capacity installed in the past expansionary cycle, 1975-77, was predicated on intrastate gas.

All new capacity in 1983-85 will likely also utilize intrastate gas. New capacity valued at $1.4 billion has been installed since 1975, increasing overall U.S. NH_3 production capacity to just under 20 million ton. Gas curtailments—mainly represented by interstate gas supply—have had a significant impact on NH_3 supply, causing a reduction in supply capability of in excess of 2 million ton over the past 6 years.

Highly variable feedstock prices in evidence during the past 4 years have all but destroyed the traditional structure of world ammonia production and trade. Established national and inter-

national trade patterns have changed abruptly, new industries have rapidly emerged based on low cost gas supply, and some established industries have suffered crippling cost increases on very short notice.

Fortunately, the damaging effect of such major price variances has been partly obscured by the strength of the domestic and international farm economy. Improving profitability in other agrichemicals sectors has partially compensated for overall returns in the NH_3 sector. Corporate capital formation in the fertilizer industry has, however, been severely disrupted.

In the U.S. highly variable cost increases have caused economic chaos in an industry that experienced its largest, high cost, new technology, expansion from 1975 to 1977.

Several new very-high-capital-cost plants now face the prospect of being forced to contract for gas supplies at prices up to $3.50/Mcf. In contrast, highly competitive supplies of NH_3 have appeared on world markets from the Soviet-led economic bloc, COMECON; the Middle East; Mexico; and Canada.

As much as 2.5 million ton of very low cost production could conceivably be imported into the U.S. from these sources within 2 years. The vulnerability of the U.S. industry to imports of low cost NH_3 (based on arbitrary cost gas) is best exemplified by the extensive U.S. market penetration being envisaged for Soviet NH_3 prior to the Presidential embargo.

Prior to the embargo, Occidental Petroleum was scheduled to import up to 1.85 million ton/year NH_3 into the U.S. in 1980 and 1981, increasing that to 2.1 million ton/year over the 1982-87 period.

In response to domestic industry allegations of extreme market disruption, however, the federal government recently placed a quota of 900,000 ton for U.S. imports of Soviet NH_3 in 1980, pending the results of an investigation by the international trade commission.

There is little question that this reduced tonnage continues to represent a major potential disruption to the marketing/production objectives of U.S. producers. Moreover, production problems in the U.S.S.R. have delayed Soviet export capability to the extent that the recently imposed import quotas are not expected to be as constrictive as intially envisaged. It is anticipated that expanding Soviet production facilities will be capable of exporting quota volumes to the U.S. during 1980 and beyond.

In spite of the severity of its dilemma, the North American NH_3 industry may consider itself comparatively fortunate. The NH_3 industries of Japan and, to a lesser extent, Western Europe, have been forced to institute sweeping capacity rationalizations due to their extensive dependence on imported—much more costly— energy feedstock.

The Japanese industry also has been obliged to close one-third of its 6.4-million-ton capacity—at a replacement value of about $400 million. The North American industry, while certainly threatened, will doubtless endure the current cycle of instability and, by 1983, should be poised to cautiously expand.

Capital costs increases generate caution. New expansions will, understandably, be much more apprehensively considered in 1983-85 than in 1975-77. Apart from the consideration of dramatically increased feedstock costs, the U.S. NH_3 industry is also experiencing an unprecedented escalation in investment capital costs, as indicated in the table.

Substantially increased capital costs for new plants, including the cost of credit, have increased nonvariable production costs from about $55/ton in 1974, to about $115/ton for new plants constructed during the past cycle.

Using these comprehensive accounting principles, the cost analysis for new plants constructed in the next cycle must allow for about $130/ton in capital-related costs alone. Unlike the past expansionary phase, however, these new plants will likely represent only a small proportion of total NH_3 capacity, and will have major cost disadvantages.

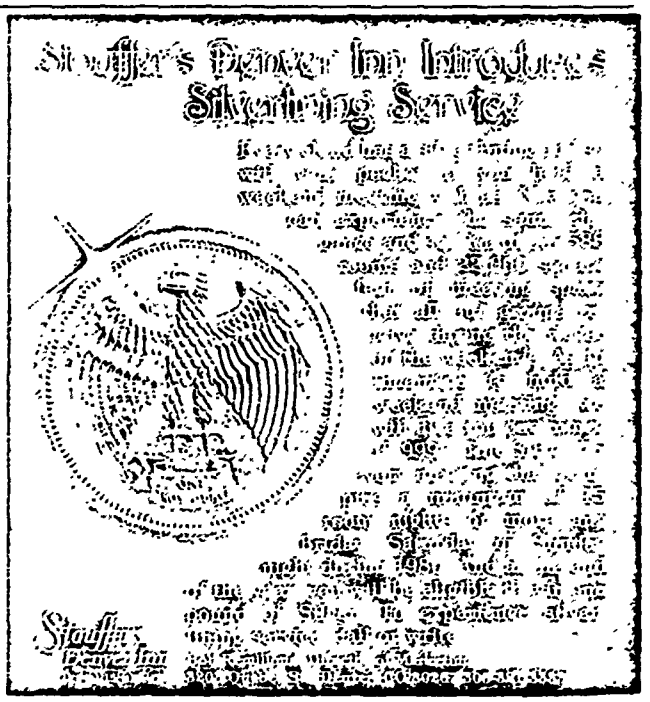
The economic sensitivity of these plants to market disruption will, therefore, be very high.

Further price escalation inevitable. Prices for NH_3 have responded to these inescapable cost pressures. Prices of about $110/ton ($1980) realized in 1973, prior to the commodity price explosion, have now escalated to about $160/ton.

While the increase has been substantial, it is apparent that prices have not yet fully adjusted to the structure of the new production economics. This is due to three primary factors:

1. The existence of considerable low cost gas supply (old contracts)
2. The lower capital costs of pre-1975 capacity
3. A continued world NH_3 oversupply situation.

By late 1982, it is expected that prices will have strengthened to at least the $220-$250/ton level, and that industry apprehension over further expansion will have noticeably subsided.



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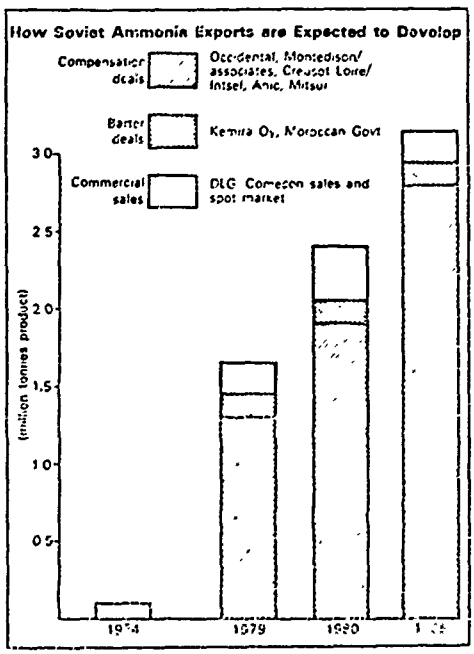
Largest-ever increase in Soviet ammonia capacity this year

EXHIBIT 1

Ten 1,360 t.p.d. units scheduled for handover in 1979/80

*Until recent political developments in central Asia hung a question-mark over the growth of U.S.S.R./U.S. ammonia trade (*World Trends *this issue) capacity and contract limitations alone seemed to be stemming the advance of Soviet exports. This year total ammonia exports are expected to reach 2.4 million tonnes, as long as political considerations do not keep Soviet product out of a number of Western countries whose nitrogen industries are reeling under an unprecedented sequence of massive increases in feedstock prices. At the time of writing this article in December such considerations looked most unlikely to influence trade; events at the turn of the year may yet leave a great deal of Soviet ammonia – the result of an expansion unprecedented in the industry's history – on the shelf.*

In nutrient terms anhydrous ammonia is now by far the largest single component of Soviet fertilizer exports. Shipments abroad calendar year 1979 are expected to be in excess of 1.8 million tonnes product, compared with 715,000 tonnes in 1978 when the U.S.S.R.'s export programme was seen to make so much progress. Further increases still are expected, and by the mid 1980s the U.S.S.R. could be exporting around 3 million tonnes annually. Massive efforts, on the part of the Soviet chemical industry ministry as well as of the individual production-location operatives, do seem to be being made to meet contractual obligations so as to consolidate a reputation as a reliable international supplier. Inevitably domestic manufacture of finished fertilizer products is suffering, hence presumably consumption as well as the U.S.S.R. engages in virtually no import trade in nitrogen fertilizer products. The 1978 fertilizer production figures reveal that Soviet nitrogen output in finished form advanced by only around 2%, the consumption increase was roughly of the same order. Production indications for the first nine months of 1979 are that little further progress has been made, although at this stage the indications are only available for the fertilizer industry's production as a whole. In 1978 nitrogen fertilizer production and consumption reached record levels of 9.22 million and 7.66 million tonnes N respectively; these achievements amounted to increases of 2.2% and 1.8%. Prime among reasons for the apparent slowdown in 1978 and 1979 is the enhanced export commitment for the Soviet ammonia industry in the key Ukraine/Southwestern RSFSR region where the Gorlovka, Odessa and Togliatti plants are located; the indications are that natural gas supplies comprise one of the healthiest aspects of the Soviet economy, and that a good recovery has been made from the difficult times which were experienced early in 1979. Thus January 1980 should see export deliveries, to the U.S.S.R.'s East European neighbours, via the jointly-constructed Oren-



burg pipeline, reaching their targetted level for the first time.

Putting ammonia exports first

There is little doubt that the Soviet chemical authorities budgeted quite realistically for downstream production being hit when they negotiated huge ammonia supply deals with Western companies in the mid 1970s (*Nitrogen* No. 114, July/August 1978). Certainly 1979's very disappointing grain harvest (totalling 180 million tonnes, compared with the previous year's 237 million and the target of around 240 million) can in no way be explained away by the failure of the fertilizer industry to supply Soviet agriculture with the synthetic plant food supplies it requires. The influence of climatic fluctuations on sovkhoz (State farm) and kolkhoz (collective farm) output remains the bane of the Soviet economy, even after more than half a century of centralized planning.* But the juxtaposition of inbound grain and outbound ammonia trade on such a scale as the early months of 1980 would, prior to the American decision on Soviet grain sales, have witnessed must nevertheless be a source of concern to the Supreme Soviet.

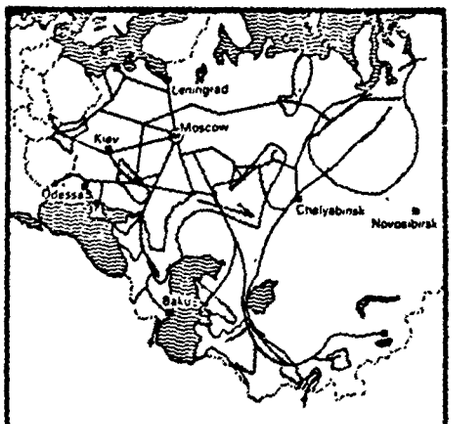
Considering the effort that must have been put into meeting 1978's export commitments for ammonia – requiring an extra 0.42 million tonnes N of primary production derived mainly from new plants still in their initial period of production – the maintenance of downstream activities on the scale indicated for 1978 and 1979 is an achievement in itself. New export customers for anhydrous ammonia in the Netherlands, Italy and Denmark have been accommodated, some expressing considerable satisfaction at the way in which the deliveries have been implemented (notably the Danes who are placed so conveniently on the Baltic trade route leading to the U.S.S.R.'s "backdoor" port of Ventspils).

The availability of adequate supplies of natural gas is more than ever important for the Soviet nitrogen industry in 1979/80 as no less than ten 1,360 t.p.d. ammonia plants of Western design are, by *The British Sulphur Corporation*'s own calculations, scheduled to be handed over to the Soviet authorities within the twelve-month period. If this happens it will be the biggest single step forward that *any* one country's nitrogen industry has ever taken within any one year. Five such plants were handed over in 1978/79, and in 1980/81 yet three more 1,360 t.p.d. units should be coming into production to (almost) complete this eventful phase in the Soviet nitrogen industry's expansion. Informed observers of the Soviet industrial scene note that the start-up operations of key process plants such as are found in the nitrogen sector are frequently delayed after the handover date (the objective of the calculation referred to above) – one reason being the necessity to balance the supply of start-up skills and resources around the different autonomous republics comprising the Union.

Adapting to a major export role

Overall 1979 and 1980 are expected to be years of retrenchment as the U.S.S.R. adapts the output of its

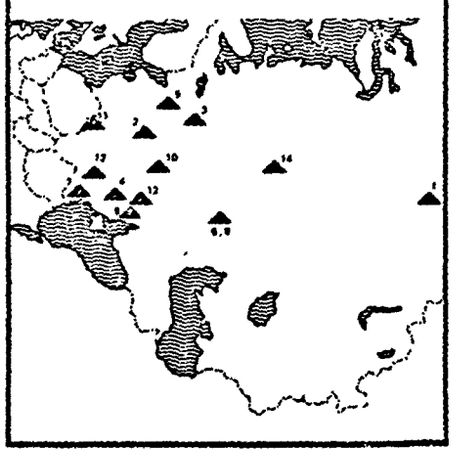
* *Five-year Plans were introduced in 1928 following the failure of the New Economic Policy established in 1921. 1980 is the last year of the Tenth Plan period.*

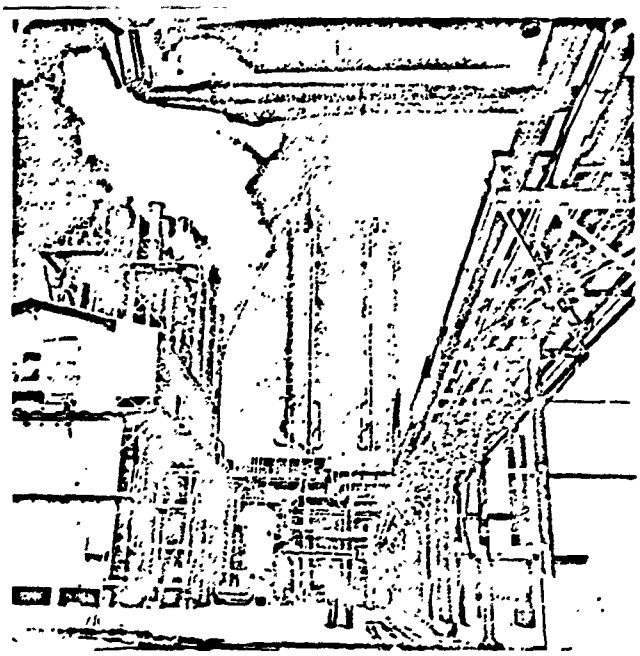


1,360 t.p.d. Ammonia Plants in the U.S.S.R.

gas field
gas pipeline
major cities
production locations

a) recently completed		*b) due for completion shortly*	
1	Novokemerovo		
2	Dorogobuzh		
3	Cherepovets	9	Togliatti (2)
4	Dneprodzerzhinsk	10	Novomoskovsk
5	Novgorod	11	Grodno
6	Togliatti (2)	12	Rossosh
7	Odessa (2)	13	Cherkassy
8	Gorlovka (2)	14	Perm





Nevinnomyssk, where two 1,360 t.p.d. ammonia plants are now in operation, was one of the first huge production complexes to be completed in the current phase of the Soviet expansion. Both plants are Pullman Kellogg/Toyo Engineering units.

nitrogen industry to the massive new export commitments entered into in the 1970s. Only a modest increase in downstream production can be expected in the first year of the new ammonia plants' operation, and the solid products are just not going to be available for more than a minor consumption increase (considerable effort will be put into building the urea export trade). Following this the early 1980s should see a steady build up of domestic market availability, in which time new Western-engineered plants at Togliatti, Perm and Angarsk will come into production. Then another massive expansion will be experienced in the mid-1980s when no less than ten more 1,360 t.p.d. ammonia plants are expected to come on stream. Export market supply difficulties will presumably be largely a thing of the past for the ammonia industry by then, so presumably it will be at this stage that Soviet downstream production, and consumption, will really be able to gather momentum. Direct application of ammonia is a technique that can be expected to grow rapidly in the interim period.

Most start-up dates can only be inferred

Because Western contractors have handled most of the ammonia capacity expansions of the Ninth and Tenth Plan periods reasonable predictions of timing have been made possible for the impact of these new plants on total Soviet (and world) supplies. Other, wholly-Soviet engineered, projects have been implemented at the same time, such as at the nitrogen complexes at Kokhtla Yarve and Mary – and this activity is presumed to continue – so there is no way of making a precise prediction of effective total Soviet ammonia capacity in the 1980s. Several of the U.S.S.R.'s smaller vintage plants must be scheduled for shutdown in this period, to compound the problem further.

Most of the information available on the new 1,360 t.p.d. plants stems from details of contract placement; and from the progress reports of the contractors themselves; from these sources handover dates can be inferred but commissioning details usually have to come from the Soviet media – the opportunity frequently being taken to upbraid publicly those erring citizens responsible for not meeting scheduled dates for delivery etc. Progress data is also

Western Contractors Involved in the Expansion of the Soviet Ammonia Industry

Contractor	Location	Details
Toyo Engineering Corp. – Japan	Muluple units at Novomoskovsk, Severodonetsk, Nevinnomyssk, Novgorod, Novokemerovo and Togliatti; together with 16 other locations	most, but not all, contracts, have covered engineering, procurement and construction supervision services. Ten contracts (in 1977) omitted engineering component.
Pullman Kellogg – U.S./Europe	most TEC locations, together with Odessa, Gorlovka	licensors of the most widely used ammonia process in the U.S.S.R.
Creusot Loire/ ENSA-France	Odessa, Gorlovka	compensation payment basis designed to improve security of French ammonia supply.
Chemico-U.S.	Togliatti	ammonia plants established to provide basis for Occidental fertilizer deal.

The organization of Soviet agriculture

Experts point to climate as the main reason for the frequency of serious crop shortfalls in the U.S.S.R. – last year's harvest being not the only example of the 1970s. Vigorous attempts have been made to adapt Soviet agriculture on large-scale lines to compensate for this (though primarily to meet ideological objectives). Large estates side by side with minuscule, though highly productive, small holdings were the inheritance of the nineteenth century. After the Revolution an interim period prevailed until the policy of collectivization was implemented from 1928 onwards.

By 1940 nearly all farmland was worked under the following system, with post-war annexations falling into line.

Collective farms manage land which is leased from the state in perpetuity. The collective manages the farm as a single unit under the direction of a committee, elected by the members. Government authorities lay down policy guidelines and determine crop prices, but most decisions influencing production are taken by the committee members, at local level. This results from many years of inefficient production due to over-centralized decision making. Each member of the collective has a small plot of land and a few livestock, solely for personal use. Income from the collective is disposed according to the committee's decisions; this follows deliveries to the state purchasing agencies agreed in negotiations on both quantity and price. Income is divided among collective community needs (farm buildings, seeds and fertilizers, sports facilities and so on) and individual members. Some produce is sold on the open market to supplement the incomes of members; an important part of income is also received in kind – produce which can either be consumed or sold. Incomes are worked out according to a piece-work system, incorporating a basic monthly element.

Workers on state farms are paid employees with similar conditions to those in other state enterprises like the fertilizer production complexes. These farms also function as research centres and training institutes, where benefits are shared among nearby collectives.

Collective farms proliferated up to nearly 240,000 in 1940, but a series of amalgamations (designed to produce more efficient units) has brought this down to less than 30,000 units today. Each has about 6,000-7,000 h.a. of land in production and supports about 1,600 people. State farms are larger (about 18,000 h.a. in 1976) and support roughly 1,000 more people; they have been used extensively in the opening up of new lands and are relied on heavily to increase Soviet grain production.

made available, officially but sporadically, on some units. From these sources of information it has been calculated that the following ammonia capacity developments are now taking place; many of the plants indicated for commissioning in 1979/80 are already in production.

The location of the "recent" and "imminent" 1,360 t.p.d. units in relation to the key natural gas fields and distribution pipelines in the U.S.S.R. are shown on the accompanying map.

Progress related to ammonia development

Capacity expansion on this scale has of course been accompanied by complementary developments, namely of an elaborate ammonia transportation system in the hinterland of Yuzhny port (near Odessa) and of many downstream units. New urea units incorporating Western technology are expected on stream shortly at Berezniki, Perm and Novokemerevo, though inevitably the scale of ammonia development far exceeds that of solid nitrogen products in order to satisfy the contractual export requirements. Some of the 1,360 t.p.d. units cannot be linked to ammonia export plans because of their location, and will presumably be linked to downstream process plants of Soviet design. Prominent among these are the ten plants for which Toyo Engineering Corp. signed main equipment and machinery contracts with V/O Techmashimport in 1977; these plants are to be built by Soviet construction teams using equipment supplied under an agreement with Czechoslovakia. No details of scheduling have been officially released, but it seems likely that many of these plants will be operational by the mid-1980s with phased commissionings from 1983 or 1984 onwards.

Soyuzchimexport now the dominant force in world ammonia trade

In mid-December, shortly after the announcement of the U.S. President's verdict on the ITC's recommendation concerning Soviet ammonia imports (see page 5), Occidental Petroleum Corp. announced it would be receiving 1.4 million tonnes from this source in 1980. This was considerably down on the total expected to be agreed for supply to the United States this year, but it nevertheless means that total Soviet ammonia exports in 1980 are likely to be around 2.4 million tonnes. *The British Sulphur Corporation*'s own expectations are that the total quantity of anhydrous ammonia involved in world trade for the year will be in the 3.5-4.0 million tonnes product range, which means that the Soviet export agency *V/O Soyuzchimexport* will be seizing once more the lion's share of international ammonia trade. By the middle of the decade Soviet exports are likely to surpass the 3.0 million tonnes mark even though total world ammonia trade is unlikely to have outgrown the 4.5-5.0 million tonnes range. Sustained domination of international ammonia trade on this scale, coupled with the expected satisfaction of domestic demand as the next wave of 1,360 t.p.d. plants comes on stream in the mid-1980s, should leave none in doubt that by the end of the decade the U.S.S.R. will have the loudest voice in international nitrogen affairs. The unprecedented scale of ammonia plant commissionings this year is likely to be seen as a principal stepping stone on the path to this apparent goal.

EXHIBIT J

World Trends

World ammonia trade now a billion-dollar business

After 1978's phenomenal rise of 26%, world trade in anhydrous ammonia – the building block of the nitrogen fertilizer industry – expanded by a further 14% in 1979 according to preliminary data compiled by *The British Sulphur Corporation*. This increase was sufficient to take the total volume of ammonia entering export markets to an annual record of 5.65 million tonnes (compared with 4.95 million tonnes the year before and 3.94 million tonnes in 1977) and enough to take the value of trade in this commodity to almost $1,000 million at current landed prices.

More or less all of the increase in world export supply was accounted for by expanded exports from the U.S.S.R. and the United States. The other three of the top five exporters in 1979 did not better their performance over the previous year (see Table).

Soviet exports double and it could have been more

With exports doubling to an estimated 1.4 million tonnes in the year under review the U.S.S.R. emerged as clear giant amongst the world's leading ammonia exporters. Indeed the U.S.S.R. now accounts for almost one quarter of the ammonia traded internationally each year, a vastly different picture to four years before, when exports were below 0.1 million tonnes and represented just 2.5% of world trade.

However, although 1979's trading performance was without a doubt spectacular, buyers of ammonia world-wide must surely be reflecting on what might have been if the severe winter and widespread gas shortages that crippled production at export-orientated Soviet plants in the first-half of the year had not occurred. These problems not only restricted the U.S.S.R.'s ability to deliver tonnage as scheduled to the United States under the Oxy deal in the first-half, but also made it impossible for the U.S.S.R. to ship large tonnages onto the spot market. This clearly kept the ammonia supply/demand balance much tighter than it would have been otherwise.

In spite of its many problems the U.S.S.R. does appear to have fulfilled a large proportion of its contractual commitments in 1979.* For example 705,000 tonnes of the 850,000 tonnes scheduled for direct delivery to the United States under the Oxy deal had arrived by year end with the rest expected to arrive in 1980 to make up the shortfall.

* *A full list of the U.S.S.R.'s contracts was given on page 30 of the last issue of* Nitrogen.

Imports from U.S.S.R. underpin U.S. export expansion

Expanded Soviet deliveries underpinned a 22% increase in ammonia imports by the United States (1.77 million tonnes compared with 1.45 million tonnes in 1978) and in turn supported wider international involvement by the United States' own ammonia producers. By the end of 1979 outward shipment of ammonia from the U.S. had risen to over 0.72 million tonnes, almost 0.24 million tonnes up on the previous year.

Turkey was the main importer of U.S. ammonia, taking over 140,000 tonnes. Most of this total was contracted in May in a sale which set U.S. f.o.b. price levels firmly on an upward path. The upward trend was continued throughout the third quarter by heavy movement of U.S. material out of the Gulf into West Europe where plant problems and contractual commitments continued to limit spot availability of European ammonia.

With large quantitites of Soviet ammonia on its way U.S. prices began to fall back in the fourth quarter. F.o.b. levels in the Gulf were seen to fall below $140 per tonne.

Mexico slips to third in export rankings

Mexico shared the fate of the U.S.S.R. in suffering from severe operating difficulties in the first half of

World Trade in Ammonia 1975-1979
('000 tonnes product)

	1975	1976	1977	1978	1979*
World	3,509	3,312	3,936	4,950	5,649
U.S.S.R.	88	163	190	740	1,400
United States	273	399	383	477	715
Mexico	13	—	89	658	642
Netherlands	678	545	716	695	534
Canada	116	226	574	481	484

* Preliminary data.

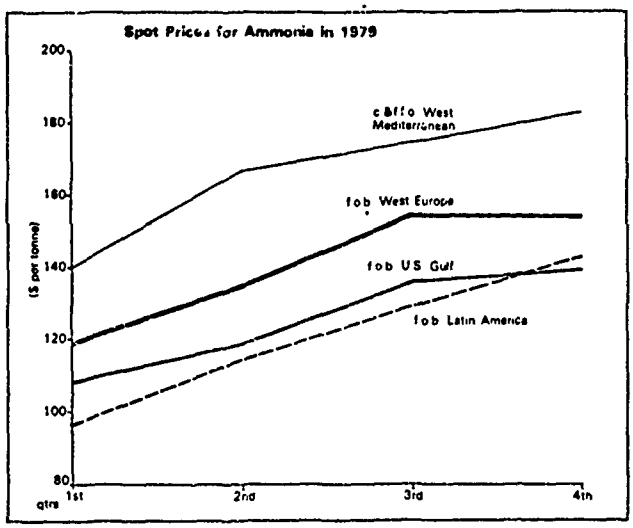
the year. Operations at four plants were affected resulting in Pemex declaring *force majeure* on contracts in the second week of April and imposing a 60% restriction on deliveries scheduled for the April-May period. Mexico did not catch up on deliveries in the second-half and consequently relinquished its position as the world's second largest exporter to the United States. The effects of Mexico's slightly diminished importance were most noticeable in the United States in the second-half of the year when just 100,000 tonnes were supplied compared with more than double that amount in the corresponding period of the previous year.

Not surprisingly the adverse development in Mexico had a major impact on f.o.b. price quotes in the region. These were seen to rise from just a little over $105 in March to $120 plus in August providing a healthy upturn in returns to Venezuela, which at times was the sole spot source of ammonia in the Latin American region.

In West Europe plant problems were at the fore in mid year when an explosion at Geleen put UKF's 1,000 t.p.d. ammonia unit out of action for two months. UKF declared *force majeure* on its third quarter contracts causing a flurry of activity in the spot market and a sharp escalation in f.o.b. prices to over $150 per tonne.

Over the year as a whole the upshot of the Geleen shutdown and difficulties elsewhere was to reduce Dutch exports by almost one quarter to just over half a million tonnes. This reduction, coupled with a halving in exports by the United Kingdom more than outweighed the impact of higher exports by West Germany and France as well as the arrival of ammonia from NET in the Republic of Ireland on the spot market. As a result West European prices inflated.

Another factor pushing up prices in West Europe over much of 1979 was the absence of tonnage from the Middle East. This was caused mainly by Middle East Gulf producers opting to fulfill the export commitments of Iran, commitments which the closure of the Bandar Khomeini ammonia plants had made it impossible for Iran to meet.



Plant problems in Libya made matters worse for European ammonia importers cutting back on volumes available from yet another source.

In addition to the reduction in export availability other factors inflating ammonia prices in Europe were increased sales and prices of downstream products and rapidly inflating feedstock costs (particularly at ammonia plants producing from oil derivatives such as naphtha). While the former boosted demand for ammonia the latter prompted producers to seek much higher prices in both contract and spot sales.

The tone of the West European market altered noticeably towards the end of 1979, however, with the appearance of ammonia from Iran. This development eased the upward pressure on prices.

Ammonia freight rates escalate and add to importers problems

Besides higher ammonia prices (see Diagram) more bad news for importers of ammonia in 1979 was the sustained recovery in gas vessel rates that took place throughout the year. Although increased seaborne movement of ammonia played a part in maintaining upward pressure on rates the impact of heavier trading of LPG, a competitor for vessel space with ammonia, was significant.

The accompanying Table highlights the extent of the escalation in ammonia freight rates while the Diagram illustrates the effect of higher freight costs on landed prices of ammonia using deliveries to the West Mediterranean as an example.

Ammonia Freight Rates, End 1978, End 1979, Compared

Route	End 1978 Tonnage	End 1978 Rate	End 1979 Tonnage	End 1979 Rate
U.S. Gulf-Porto Marghera	8,000	25.00	14,000	47.00
U.S Gulf Spain	8,000	21.50	10,000	50.00
U.S. Gulf-North Europe	8,000	22.50*	30,000-35,000	35.00*
Northwest Europe South Europe	4,000	32.50	1,600	45.00
Middle East Gulf Europe	20,000	35.00	8,000	55.00
U.S.S.R.-U.S. Gulf	8,000-10,000	30.00	30,000-35,000	36.00-42.00

* Approximately

1980 – another year of growth, but on a smaller scale

At this juncture it is estimated that 6.2 million tonnes of ammonia will be traded in 1980 with the U.S.S.R. once again providing most of the stimulus to growth. Contracts already signed commit almost two million tonnes of Soviet product for export this year and it is possible that even this total could be exceeded in view of the

massive additions to capacity being made and the mild winter the U.S.S.R. is having at present.

If deliveries of Soviet product are made to the United States as planned – the U.S.S.R. has agreed to deliver to Oxy despite the Carter administration imposing an embargo on superphosphoric acid exports to the U.S.S.R. – then it could be argued that exports of U.S. ammonia will be maintained at or even boosted beyond 1979's level.

However, it is more likely that the even more widespread availability of Soviet ammonia – in Spain and Turkey for example – will diminish export opportunities for United States producers and hence cut exports below 1979's level.

In Latin America Pemex will be hoping to avoid plant problems this time around, although exports seem unlikely to increase due to greater downstream process demand – a 152,000 t.p.a.N urea unit is scheduled for start up in mid-year.

Avoidance of plant problems will also be hoped for by some of the more minor exporters whose absence from the market at times during 1979 had such an inflationary impact on prices – particularly in West Europe.

West Europe's own output of exportable ammonia will be further squeezed by rising feedstock costs: the Netherlands is due to bring into effect new, higher natural gas prices for its international customers in April while naphtha feedstock prices, still at well over $350 per tonne, will remain a thorn in the side of a sizeable proportion of West Europe's industry.

In the Far East the problems of reliance on increasingly costly naphtha could well lead to the advent of ammonia importing by Japan and, possibly, South Korea. This new development could well counteract some of the deflation in real ammonia price levels that this year's projected increase in Soviet exports seems likely to bring about.

Clive Yearsley

EXHIBIT K

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 1979 Commission file number 1-520

OCCIDENTAL PETROLEUM CORPORATION

(Exact name of registrant as specified in its charter)

California	95-1060570
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
10889 Wilshire Boulevard Los Angeles, California	90024
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number: (213) 879-1700

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
11% Notes due 1982	New York Stock Exchange
$2.50 Cumulative Preferred Stock	New York Stock Exchange
$2.30 Cumulative Preferred Stock	New York Stock Exchange
$2.125 Cumulative Preferred Stock	New York Stock Exchange
$4.00 Convertible Preferred Stock	New York Stock Exchange
$3.00 Convertible Preferred Stock	New York Stock Exchange
$2.16 Convertible Preferred Stock	New York Stock Exchange
Common Shares, Par Value $.20	New York Stock Exchange Pacific Stock Exchange
Warrants to Purchase Common Shares	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes X No __

At December 31, 1979, there were 72,325,159 Common Shares issued and outstanding, excluding 459,454 treasury shares.

AGREEMENTS WITH U.S.S.R.

Commencing in 1973 Occidental entered into a series of agreements with the U.S.S.R. which, as amended and supplemented from time to time, provide for (1) the furnishing by Occidental to the U.S.S.R. of technology, design, construction supervision services, and equipment for ammonia and superphosphoric acid ("SPA") port storage and ammonia pipeline facilities now under construction in and by the U.S.S.R. (the "technical agreements") and (2) the sale by Occidental to the U.S.S.R. of SPA and the purchase by Occidental from the U.S.S.R. of ammonia, urea and potash, during the period 1978 through 1997, in the quantities indicated below (the "fertilizer agreements").

Occidental has substantially discharged its responsibilities with respect to technology, design and equipment delivery under the technical agreements, and the construction supervision services thereunder are expected to be completed in 1980. The technical agreements have been profitable for Occidental in each year since 1974.

Deliveries under the fertilizer agreements began in 1978. The following table sets forth the quantity of each product delivered or agreed to be delivered under the fertilizer agreements in the years indicated:

	1978	1979	1980	Each of the Years 1981-1987	Each of the Years 1988-1997
			(thousands of metric tons)		
Sales to U.S.S.R.:					
SPA(1)	10	480	1,000	1,000	1,000
Purchases from U.S.S.R.:					
Ammonia:					
Pursuant to a 10-year agreement(2)	350	510	450(3)	600	— (2)
Pursuant to a 20-year agreement(1)	—	440	600	1,500	1,500
Total ammonia(2)	350	950	1,050	2,100	1,500(2)
Urea(1)	23	473(4)	1,000	1,000	1,000
Potash(1)	—	830(5)	1,000	1,000	1,000

(1) The fertilizer agreements contemplate that the value of SPA sold by Occidental to the U.S.S.R. over the entire 20-year term should not exceed the aggregate value of Occidental's purchases from the U.S.S.R. of the ammonia purchased under the 20-year agreement and of the urea and potash. The agreements provide that upon request of one of the parties they shall meet from time to time to mutually agree on measures to be taken to achieve this.

(2) Occidental's purchases of ammonia under the 10-year agreement are to be continued after 1987 at the rate of 600,000 metric tons per year if necessary to provide the U.S.S.R. with an aggregate of $900,000,000 in sales proceeds from all ammonia purchases under such agreement. In addition, Occidental's purchases in any year may be increased by mutual agreement by up to 400,000 metric tons of ammonia, if necessary to achieve the same result. It is impossible to predict whether any additional such purchases will be made. The $900,000,000 amount is approximately equal to the amount (including estimated interest) required to repay funds borrowed by the U.S.S.R. from the Export-Import Bank of the United States and a group of United States and foreign banks to construct various fertilizer facilities in the U.S.S.R., including the port storage and pipeline facilities to which the technical agreements relate.

(3) Does not include 250,000 to 350,000 metric tons (for second half 1980 delivery) which is subject to further price negotiation by April 30, 1980.

(4) Because of various problems in the U.S.S.R. (including rail transportation, late completion of terminal facilities and product quality), Occidental received only about 210,000 metric tons of urea in 1979, with about 130,000 metric tons carried over into the first quarter of 1980.

(5) Maximum amount, subject to the ability of the U.S.S.R. to deliver the product in the quantity and quality required. Because of product quality, transportation and other internal U.S.S.R. problems, Occidental contracted for only about 62,000 metric tons of potash for delivery in 1979, of which only about 37,000 metric tons were delivered in 1979, with about 25,000 metric tons carried over into the first quarter of 1980.

The prices for all four products are to be paid separately in cash. The fertilizer agreements require that specific contracts, which will set prices applicable for varying periods of time, be negotiated periodically based on market prices (with remittances to Occidental of discounts of 2.5% on ammonia and 3% on urea and potash).

Through 1979, specific contracts were negotiated establishing prices and certain delivery schedules with respect to 1,000,000 metric tons of SPA for each of the years 1980 and 1981, 1,300,000 to 1,400,000 metric tons of ammonia for 1980, subject to Note (3) above, and 600,000 metric tons of ammonia for 1981. Specific contracts have been negotiated establishing delivery schedules with respect to the 1,000,000 metric tons of urea to be delivered in 1980. A price has been established for 37,000 metric tons to be delivered in the first quarter. A specific contract has been negotiated establishing delivery schedules with respect to the 1,000,000 metric tons of potash for 1980, with prices to be further agreed quarterly. Based on the factors which have limited the deliveries of potash in 1979, Occidental expects that deliveries in 1980 will be substantially less than the agreed amount. Substantially all of the urea and most of the potash to be delivered in 1980 will be resold outside the United States.

Deliveries of the 10,000 metric tons of SPA to the U.S.S.R. in 1978 and the 330,000 metric tons of ammonia in 1978 and 1979 were made at prices which were negotiated in 1973 (in the case of the SPA) and 1976 (in the case of the ammonia), with reference to then market prices. Because such prices did not reflect subsequent costs of SPA production or ammonia prices current at the time of resale, Occidental incurred losses in 1978 on these transactions (primarily on its purchases and resales of ammonia), a portion of which was a $5,800,000 provision for estimated losses on certain contracted resales of ammonia in 1979 and 1980. For 1979, Occidental's overall U.S.S.R. transactions, including the technical agreements referred to above, produced a profit before allocation of selling, general and administrative and other operating expenses and before interest and taxes.

A substantial portion of the ammonia expected to be delivered to Occidental in 1980 has been pre-sold and Occidental's objective with respect to future purchases of ammonia, urea and potash from the U.S.S.R. is to pre-sell the U.S.S.R. products to the extent practicable. To the extent Occidental does not pre-sell the U.S.S.R. products, Occidental may realize some profit or loss on such purchases in addition to the discounts described above.

In January 1980, following the intervention by the U.S.S.R. in Afghanistan, President Carter imposed a temporary quota of 1,000,000 short tons (approximately 907,000 metric tons) on imports of Soviet ammonia in 1980 and requested the U.S. International Trade Commission ("ITC") to review the issue of possible market disruption which had been raised in a 1979 ITC proceeding. In March 1980, the ITC concluded that Occidental's imports of Soviet ammonia were not causing a market disruption and Occidental expects the quota to be lifted.

In February 1980, the administration ordered an embargo on the export of phosphates, including SPA, to the U.S.S.R. for an indefinite period. This has not prompted the U.S.S.R. to embargo deliveries of ammonia or other products to the U.S., but such action is a possibility.

As a further consequence of the action by the U.S.S.R., the International Longshoremen's Association ("ILA"), which handles the berthing, loading, and unloading of ships at most East and Gulf Coast ports, ceased handling U.S.S.R. ships and cargoes in January 1980. Prior to the SPA embargo by President Carter, this boycott adversely affected Occidental's sales of SPA, which are exported through the port of Jacksonville, Florida. Petitions have been filed with the National Labor Relations Board ("NLRB") for a determination that the ILA's boycott against handling Soviet ammonia and potash is illegal. The NLRB has filed a suit in the United States District Court in Savannah, Georgia, and a preliminary injunction was granted on March 4, 1980 against the ILA. The preliminary injunction has been appealed. Recent cargoes of Soviet ammonia have been unloaded by the ILA.

In response to the administration's SPA embargo and the ILA boycott, Occidental has increased production of granular fertilizers and merchant grade phosphoric acid in lieu of the SPA which otherwise would have been shipped to the U.S.S.R. These products are being sold in domestic and foreign markets where demand is currently strong. As long as the SPA embargo and ILA boycott continue, Occidental's profits from its agricultural products operations will be significantly reduced from what they would be if SPA exports to the U.S.S.R. had not been interrupted. Nevertheless, Occidental expects that these operations will still operate at a profit in 1980 through the shift to the production and sale of granular fertilizers and merchant grade phosphoric acid.

The fertilizer agreements contemplate that at least 50% of the ammonia is to be shipped from the U.S.S.R. to the United States and other world markets in vessels owned or chartered by Occidental. However, Occidental has agreed to the delivery by the U.S.S.R. in its own chartered vessels of all the ammonia to be delivered in 1980 and 1981 with respect to which prices have been negotiated, except for 215,000 metric tons for 1980 and 150,000 metric tons for 1981.

The fertilizer agreements contemplate that all of the SPA is to be shipped from the United States to the U.S.S.R. in vessels owned or chartered by Occidental. During 1979 all such shipments were on chartered vessels. Occidental has entered into a contract for the construction of three chemical carriers to transport SPA to the U.S.S.R. These vessels, two of which are expected to be delivered in 1980 and the third in 1981 under lease arrangements, are currently estimated to have a net cost of approximately $97,000,000 after the application of construction subsidies from the Maritime Administration of the Department of Commerce equal to the difference between the costs of construction in domestic yards and foreign yards. In addition, a 75,000 ton capacity vessel owned by Occidental and previously used as a crude oil tanker has been converted to a chemical carrier at an estimated capital cost of approximately $15,000,000.

Only two or three of Occidental's four chemical carriers would be required to transport the annual exports of SPA from the U.S. to the U.S.S.R. The excess vessel capacity has been planned for participation in the chemical transport market. With the SPA embargo in force, Occidental plans to utilize all of the carriers in the chemical transport market, including the transport of merchant grade phosphoric acid produced by Oxychem.

The U.S.S.R. is constructing the facilities necessary for the performance of its obligations under the fertilizer agreements. To deliver the required quantities of SPA to the U.S.S.R., Occidental has substantially expanded Oxychem's SPA production facilities and marine terminal in Florida at a total cost of approximately $245,000,000, a substantial portion of which has been financed under operating leases. See Notes 10 and 22(b) to Consolidated Financial Statements.

Mr. JONES. I thank you very much for a very thorough statement. The entire statement has beeen included in the record. I must say this morning's testimony by the administration left a number of questions in the minds of those of us who were here. We did not feel they were adequately prepared.

In essence, one of the things they intimated took issue with your point that a 10- to 12-, maybe not 15-percent penetration of our markets by the Soviets would not be all that disastrous and all that catastrophic; besides, there were other places where we could get ammonia. Do you want to respond to that?

Mr. JAQUIER. I will ask Al Laehder to respond to that. There are other major countries supplying the United States with nitrogen, specifically, Canada, Mexico, and Trinidad. We have done a rather extensive analysis on what will be available from these countries in the future and I will ask Al to reply.

Mr. LAEHDER. The three countries Mr. Jaquier mentioned—Canada, Mexico, and Trinidad—are the most economic for supplying ammonia to the United States from offshore. We have done an analysis as best we could on the supply and demand for these countries on through 1983. It appears as exhibit E in the testimony that Mr. Jaquier has submitted on behalf of the ad hoc committee.

Basically, what we have done in this analysis is to assume that, typical of recent experience, some 97 percent of all Canadian production of ammonia beyond their present needs will come from the United States. That is what we would call export capability.

We have included some four new plants in Canada, and another round of expansion may be in the works for the near future. On this basis, we then have gone to Mexico. We have expanded the Mexican production by the two new plants they presently have under construction. We include two more they have in the planning stage which they have not yet contracted for and two more, which is relatively in keeping with their plans, and we have said we would assume 50 percent of their exports would come to the United States. In the past there have been some statements they plan 40 percent. We were being conservative on this.

With respect to Trinidad, there are two new plants under construction there. We have assumed all of the incremental production from these plants would come to the United States. On this basis—and it is outlined in exhibit E—we find that the roughly 2 millions tons of ammonia equivalent that is being exported from these countries to the United States in 1979 would, by 1985, amount to some 4 million tons. Yet even with that—and we think that is about as much as could come to the United States—we have found, and it is shown in exhibit A in the testimony, that with the 2.5 million tons of ammonia equivalent that the Soviets, through Occidental, would be planning to send to the United States cut off, that the U.S. plants could not respond by simply increasing their operating rate to make up the difference. In other words, we would find that especially, say, by 1983 or some time when it would be unlikely that present plants that are closed could still be reactivated, that you would have to have an operating rate in the range of 96 percent, and actually over a period of time, past experience indicates an operating rate of 91 or 92 percent appears more realistic.

Mr. JAQUIER. I would like to point out to the committee that the construction of an ammonia plant is a long leadtime proposition. It takes about 3 years from the time you make an investment decision to get a plant in operation.

Mr. JONES. What about reactivation of an idle plant?

Mr. JAQUIER. An idle plant that is well preserved, depending on where it is located, can be reactivated in 3 to 9 months. Securing adequate supplies of natural gas and trained labor when the plant has been shut down is perhaps an even bigger problem.

Mr. JONES. In other words, in response to the administration, even though there are other non-Soviet sources of supply, they are not sufficient to act as any sort of counterbalance to the Soviet's cutting us off or taking some other precipitous action that could affect our economy?

Mr. LAFIDER. There are the foreign source supplies we have mentioned. We have taken them into account. The size of the dependence that would be coming in from the Soviet Union at 2.3 million short tons per year ammonia level could not be covered from a starting position of equilibrium. There would not be enough time to cover it.

Mr. JONES. I have some other questions I want you to clarify. Are you supporting this bill?

Mr. JAQUIER. Yes; we have a difference of opinion with Mr. Frenzel as to whether a tariff would be a more effective remedy than a quota. I think we lean toward the quota. We are concerned about overdependence and we support any legislation which will put some restriction on Soviet imports.

Mr. JONES. Thank you.

Mr. FRENZEL. Thank you, Mr. Chairman.

I want to thank you gentlemen for your testimony.

I have a couple of questions. Am I reliably informed that current shipments are running about 6 percent of U.S. consumption?

Mr. LAFIDER. Currently the shipments are coming in at the rate of about 100,000 tons a month. That would be, say, 1.2 million tons a year. There are about 19 million tons of domestic consumption at the present time, as I recall, so that would be in the 6-percent range.

Mr. FRENZEL. We will hear later from the importer who I believe takes the position that while these will increase, they will begin to taper off in the future.

Can you give us your estimates on what the Russian penetration will be 2 years and 5 years out, absent legislation?

Mr. JAQUIER. Absent legislation, we believe that in the 2- to 5-year period Russian market penetration will achieve a range of 10 to 12 percent of total U.S. ammonia use. I am including both industrial use and agricultural use.

Industrial use is about 25 percent of the total.

Mr. JOHNSON. If you take into account the major agricultural use of this product, that is, direct application, it runs around 4½ to 5 million tons. This would represent 50 percent of that amount of ammonia if you were to put it in that context. I think it is inconceivable that this country could place itself in the position of following the trends we have been in the energy situation. The Soviet Union is a centrally controlled economy and a country that is not looking at eco-

nomics as we do. I had an opportunity to debate this on another product with another country. I was naive to think that centrally controlled countries look at business markets the way we do. There is no way we can compete with them, if that is their desire.

Mr. FRENZEL. Thank you.

One of your exhibits purports to show the shipping country loses a little bit on each ton and that is exclusive of the cost of the raw material. In that analysis, you used $100 a ton. Can you give me some description of whether you are being undersold by their product on a regular basis,

Mr. JOHNSON. I would say there is hardly any way of calculating the value to the U.S.S.R.

Mr. FRENZEL. Are you being undersold in the United States?

Mr. JAQUIER. It is based on information we have obtained from the tariff reports that there is as much as 500,000 tons of Russian ammonia under contract in the United States currently underselling domestic production. In fact, we go even further and say this ammonia is being sold presently at prices below the production costs of 50 percent of U.S. producers.

Mr. FRENZEL. That is a very strong statement.

What is the price of ammonia today?

Mr. JAQUIER. I have to point out to you that ammonia has multitiered pricing. It is priced on the spot market. It is priced to the agricultural community on a delivered basis throughout the Corn Belt and other areas. The most volatile market and the one that the ITC and a number of people frequently refer to as the market indicator is both the spot gulf coast market. The spot gulf coast market varies daily. This is a commodity business. Our assessment of the current price is in the range of $140 to $150 per short ton.

Within the past, I would say, 8 weeks that price has been as high as $160 to $165 a short ton.

Mr. FRENZEL. How about substitutes? Before we used anhydrous ammonia, didn't we dig up nitrogen?

Mr. JAQUIER. Before anhydrous ammonia, we were dependent upon manure, which was a poor fertilizer, and then Chilean nitrate, which is a mined product, and then it relied on Chilean bird droppings, and so on.

Mr. FRENZEL. You need not be so explicit.

Mr. JAQUIER. This was a big industry down there.

Mr. FRENZEL. Are there substitutes for mined nitrates?

Mr. JAQUIER. There is still some Chilean nitrate that comes into this country. With the growth of the nitrogen requirement, it is inconceivable such natural-occurring products could supply even a small percentage of the country's requirement.

Mr. JOHNSON. Anhydrous ammonia is the source.

Mr. JAQUIER. It is used as such and as a raw material for the production of other nitrogen fertilizers, such as ammonia nitrate and ammonia sulfate.

Mr. FRENZEL. I am wondering if there is some cost where a corngrower says, "at $160 a short ton, I will use a little less anhydrous." Is that possible?

Mr. JAQUIER. It is possible and it happens from time to time.

Mr. JOHNSON. There are changes from time to time and I do not want to sound dramatic. If the people started getting hungry in this country, there would be some incentive to reconsider such a product.

Mr. FRENZEL. With the current cost of corn, you ought to be able to plot at what cost you would not put anhydrous ammonia on the field.

Mr. JOHNSON. Certainly that can be calculated.

Mr. EVERETT. For a short period.

Mr. FRENZEL. Is it your opinion that the Russian imports are sold on this market at a price that is necessary to move the product regardless of cost and that they are likely to double their market penetration in the next 2 to 5 years?

Mr. JAQUIER. That is our belief, yes.

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. JONES. Mr. Russo.

Mr. RUSSO. You responded to some of the questions raised in the statement that I have from Mr. Galvin, who will testify next.

On page 4 of his statement, he talks about the fact that the dependence argument falls flat on its face when you consider that in 1979 Occidental imported less than 800,000 tons of ammonia while the domestic industry exported 3.5 million tons of nitrogen equivalent and any deficiency of ammonia in this country could be covered by redirecting the nitrogen exports.

Mr. JAQUIER. Are you addressing that question to Mr. Galvin or to us?

Mr. RUSSO. That is Mr. Galvin's statement. As I understand it, domestic producers feel that we are becoming too dependent on the Russians, and his response is that the dependency argument falls flat on its face when you consider the following facts. It is on page 4, the first paragraph.

Mr. JAQUIER. Let me clarify that statement for you, Mr. Russo.

The United States does not export 3 million tons of anhydrous ammonia. The United States exported in 1979, 789,000 tons of anhydrous ammonia. Historically and for a good many years, the U.S. fertilizer industry has exported some forms of nitrogen fertilizer, urea and ammonium sulphate, which contain an ammonia equivalent. More importantly, we also export around the world large quantities of diammonium phosphate.

Diammonium phosphate is fundamentally a phosphate fertilizer. It is not fundamentally a nitrogen fertilizer. It is a convenient form for carrying on world commerce. It contains 18 percent nitrogen and 46 percent phosphate expressed as 100 percent P_2O_5 basis. When we talk about exporting 3.2 million tons of ammonia, I think the key word is ammonia equivalent. We traditionally have been more or less in balance. We have exported nitrogen in one form or another because of the value added in such products as urea, ammonium sulphate, nitrogen solutions and we do export ammonia equivalent in the form of certain phosphatic fertilizer.

Mr. JOHNSON. In that testimony are they referring to anhydrous ammonia or nitrogen? We calculate there are about 2 million tons of nitrogen equivalent.

Mr. RUSSO. All I can do is read the statement back to you.

Mr. JOHNSON. I think Mr. Jaquier pointed out we are not exporting anhydrous ammonia. That is used to make other fertilizer products. We need those feed stocks of ammonia to produce these other products which are exported in very large amounts, but we are not exporting much anhydrous ammonia as such.

Mr. JONES. If I understand what he is testifying to, if we redirected our exports to domestic use, we would not have a problem even if there was a supply disruption.

Mr. RUSSO. That is correct.

Mr. JONES. I think Mr. Russo is asking if you agree with that statement or disagree, and why?

Mr. JACQUIER. Mr. Russo, I think we have to agree if the U.S. industry severed all connections, quit exporting fertilizers to its friends around the world which may be dependent on us for a supply, we could quickly add 3 million tons to the U.S. domestic supply. Although this is possible, I think it is not very practical.

Mr. RUSSO. Why is it not practical?

Mr. JOHNSON. We are not the sole source but we are by far the major source of phosphates for Western Europe, Turkey, India, a number of the Far Eastern countries. If the United States failed to export those products to those countries, it would be an extremely difficult problem for them, and we would be hearing about that, so it is not necessarily an interchangeable thing. If you fail to export, you use that nitrogen in the United States. That could be done but it would pose a very serious problem for some of our friends overseas.

Mr. RUSSO. If our interests were more paramount, maybe we could redirect some of that ammonia here.

Mr. JOHNSON. It would seem to me in my small mind that one of the best ways of preserving the best interests of this country in one of its major production machines, which is our agriculture, is not to allow this country to become dependent upon an adversary source for a material to produce food.

Mr. RUSSO. If Russia were to cut off 10 percent of the imports that we use, then are our current domestic raw material sources accessible to make up the difference?

Mr. JAQUIER. Today, at current import levels, we have the capability of making up the difference. Three or four years out I question seriously whether the U.S. industry could make up the difference and whether it could react in less than 3 years to shortages.

Mr. RUSSO. How much cutoff of the Russian imports would have an affect?

Mr. JAQUIER. It would reduce all farm output by 5 percent and have an unfavorable impact on the U.S. economy of $5.5 billion as a minimum. We are calculating a domino effect from the curtailment of grain production and other agricultural production, and the inflation that would result from higher commodity prices.

In recent history, we had such a situation which I am sure each member of the Committee remembers. What happened in 1974–1975, fertilizer prices went through the roof because we had price controls, the industry had been in a depression, and no additional capacity had been built in this country. Not only that, we exported far less than 5 percent of our grain crop incrementally at that time. Then the world

grain demand picked up, and agricultural commodity prices went through the roof.

Let me emphasize that we are dealing with a very sensitive area. Commodities will have very great swings in price with a very small percentage change in availability.

Mr. JONES. Do you have any further questions at this time?

Mr. RUSSO. No, Mr. Chairman. Thank you.

Mr. JONES. Have you ever considered purchasing Soviet ammonia, Mr. Johnson?

Mr. JOHNSON. Yes; we have. We entered into discussions with Occidental Petroleum in 1978. We operate a large complex at Donaldsonville, La. Ammonia to us is a raw material, a source for the production of these other important products. Urea, 45 or 46 percent granular nitrogen, requires the ammonia process to be produced because it requires the carbon dioxide from that process to produce urea.

Our discussions with Occidental had to do with an absolutely reliable supply. We could not shut down that operation and sacrifice other manufacturing in the case where we had an interrupted source of supply. So we asked for a dispensation of the force majeure provision which would have said to us, in the event the Soviet Union failed to supply in force majeure, we would look to Occidental Petroleum for our supply. We debated that issue for a long time. We also required another provision to the agreement that we must have urea because we would have to shut down our urea plant if we shut down our ammonia plant. Occidental came back and said it would not be possible to eliminate the force majeure provision and they said there would be no interruption and, therefore, there was no necessity for changing the force majeure clause. In any event, we did not get together. I am sorry because the price they offered under contract would have been very lucrative to me today. Those discussions were terminated.

Mr. JONES. What conclusions do you draw from all of this discussion, not just for your own company?

Mr. JOHNSON. I would certainly draw the conclusion that Occidental is quite capable of using uneconomic incentives, if they so choose, to sell 2½ million tons. I think eventually if action is taken, we will have no viable economic alternative than to purchase ammonia from someone like the Soviet Union or to terminate our participation in the nitrogen market in the United States.

Mr. RUSSO. I understand you are supporting a bill that would provide import quotas.

Mr. JOHNSON. We are not attempting to eliminate the supply of Soviet ammonia to the United States. We are trying to curtail it to preserve a very important U.S. industry.

Mr. RUSSO. If we put these quotas in and restrict the supply from the Russians, who would take up the difference or shortfall if the U.S. economy required more?

Mr. JOHNSON. I think more production would be economically appealing for the industry in the United States.

Mr. RUSSO. Is there such an appeal now?

Mr. JOHNSON. No, the prices are depressed and this will continue because of the imports by Occidental.

Mr. JAQUIER. I feel very strongly about it. Above and beyond my corporate bias, we have a lot of capital invested in ammonia produc-

tion and it is not very profitable and I think it is being unfairly impacted by production from the Soviet Union—a country that owns the gas, owns the plants, a government entity who can do as it pleases—and we in the United States are in private enterprise and we have to earn a return on the stockholders' investment.

Nevertheless, my own company has been involved in nitrogen for a long time, and in looking at the future, there is no question that this is one of the most strategic raw materials. Our whole farming operation is dependent on fertilizer.

We are looking forward in future years to depletion of natural gas. We have been looking for alternative raw material sources, such as coal or fuel oil. These are technically feasible. Economically, they are not feasible today. We have adequate gas to provide ammonia for the foreseeable future, but to build a new ammonia plant, taking a 3-year leadtime, requires investment of $300 per ton of capacity in 1980 dollars. An economically sized plant is about 400,000 tons a year so somebody has to put up $120 million worth of risk capital, acquire the natural gas, spend 3 years getting the plant in operation, provide tank cars and trucks, a distribution system, because with all the other problems we have, fertilizer consumption is highly seasonal. The farmers do not buy it every day. They buy it over a period of 6 weeks in the spring when they need it. If we count our capital invested in distribution, you run that cost for an annual ton of production up nearer to $450 to $500.

I heard with interest the Commerce Department say that we made this great improvement in our financial situation. Profits went up from 1 percent of sales in 1978 to 5 percent of sales in 1979.

Well, at the current market, for every dollar I have invested in ammonia facilities I sell 50 cents' worth of ammonia per year. So, when you talk about a 1 percent of sales return, you are talking about an infinitesimal return on your capital employed in a market where we have had recent prime interest of 18 to 20 percent. The U.S. nitrogen industry is very competitive. If you compare our past history, I think that that statement is borne out by the ability of this industry to expand. We have provided the American farmer with adequate supplies of reasonably priced fertilizer for many years. When you inject into this economy a sovereign nonmarket producer, a Communist nation who does not have economic incentives, does not have the accounting problems which we have, whose primary purpose is to move the volume and achieve market penetration without regard to the economics, then you limit the options which private producers in this country face when it comes to putting up risk capital of the magnitude required to build one ammonia plant.

Mr. RUSSO. What you are saying is, if the United States imposed quotas, the message to the domestic producers is, "We are going to restrict the imports and, therefore, somebody has to make up the difference," and you feel you would be capable of doing that?

Mr. JAQUIER. I think without question the U.S. industry is capable of doing this.

Mr. JONES. Thank you very much for your testimony. You have presented some very helpful comments.

Our next witness is James Galvin, president, Agricultural Products

Group, Hooker Chemical Co.; accompanied by Richard O. Cunningham, counsel.

Mr. JONES. Mr. Galvin, your entire statement will be placed in the record and you may summarize if you wish.

STATEMENT OF JAMES J. GALVIN, PRESIDENT, AGRICULTURAL PRODUCTS GROUP, HOOKER CHEMICAL, CO., A SUBSIDIARY OF OCCIDENTAL PETROLEUM CORP.; ACCOMPANIED BY RICHARD O. CUNNINGHAM, COUNSEL

Mr. GALVIN. Thank you, Mr. Chairman.

My name is James Galvin. I am president of the Agricultural Products Group of Hooker Chemical Co. I am appearing here today because our company is extremely concerned at the prospects that legislation might be enacted which would impose duties or other restrictions upon imports of Soviet ammonia.

Such restrictions would put an end to our 20-year agreement and we feel very strongly there is no justification for this.

U.S. ammonia producers do not need protection from imports. They are doing quite well. The market is strong, and I think all observers agree it will remain strong. Nor is there any legitimate concern that this country might become dependent on Russia for its ammonia supplies.

As you have noted, sir, I have submitted a written statement together with an analysis of the potential effect of H.R. 7087. I would also like this brief oral statement to be recorded.

What I would like to do is discuss briefly, as I said, a few issues which I think are essential to any analysis of the proposed restrictions on Russian imports.

First and foremost, I want to make it clear to this committee that the imposition of the 15-percent duty on imports of Russian ammonia would absolutely kill the trade agreement. That agreement explicitly provides that the Soviet Union will not absorb any additional duties imposed by the United States.

We have our own contractual agreements with our customers. They will not absorb duties. Who, then, will have to absorb these duties? Occidental.

Absorbing a 15-percent duty is impossible. If that is the objective of the bill—to kill our agreement—that is what it succeeds in doing.

We have sold to customers at prevailing market prices. They can't pay 15 percent above market. What Mr. Johnson did not say in his testimony to you is that when he negotiated with me to buy ammonia from the Russians, the price was at market as are all of our contracts. This was in 1978.

What he did say is that it is an attractive price today because we only put 6-percent escalation into that contract whereas you know inflation is now running in the double-digit range.

Mr. Chairman, I don't think this trading agreement should be killed. I think the agreement is very much in the national interest, beneficial to the United States just as it was in 1973 when every agency in the Government that reviewed it approved it, and there are several pertinent points that make it so.

The deal increases the number of jobs in the United States. It increases ammonia supply and therefore competition in the fertilizer field. It conserves natural gas, yielding a favorable energy balance that amounts to about 18 barrels a year.

Finally, every year, it generates a positive balance of payments for the United States.

I think these are important benefits, and benefits we should preserve, and I see no reason why they should not be preserved.

I will not waste your time on the claims that these U.S. producers are being injured by imports. The International Trade Commission found no injury or threat of injury to the U.S. ammonia industry only last month.

I want to spend 1 minute, however, to make it clear that the so-called dependency argument is equally unfounded. The plain fact is that Russian imports are never going to have any large share of the U.S. ammonia market.

I think we should, once and for all, clear up these figures. The ad hoc committee keeps talking about nitrogen equivalent or ammonia equivalent. Our contract with the Soviet Union calls for, and states precisely, that the maximum quantity of ammonia to be sold to the Occidental Petroleum is 2.14 million metric tons in any one year. This tonnage is destined primarily for the United States but not exclusively.

This year we expect to bring to the United States 1.2 million tons of anhydrous ammonia. In addition, we have agreed with the Soviet Union to divert 350,000 tons which will go to Europe, but even if every ton that we contracted for a maximum level of 2.1 million, were to come into this country by 1983, which is highly unlikely—we just cannot build our volume up that quick—but say it did—it would be in the range of 9½ to 10 percent of the U.S. market.

The contracts state that we will stay at that level of 2.1 million tons until 1987 at which time the tonnage is reduced to 1.5 million tons, and it stays at 1.5 million tons until 1997 when the agreement ends.

That is exactly the amount of ammonia that we are going to bring into the United States at its maximum. Therefore, I submit it was 4 percent of the market last year; it will be 6 percent this year, and it may get to 9 percent by 1985 and it will drop back to about 6 percent in 1988 or 1989 and it will end in 1997 unless the deal is renewed.

I would also like to comment on why we are selling ammonia, and object to the comments that the only reason we are here is to get market share and bring in tons. That is nonsense.

The Russians wish to sell at competitive market prices in order to generate the hard currency so they can buy superphosphoric acid from us. It has nothing to do with market share. Our contacts are finite as to what we sell to the Russians and what they sell to us.

I would like to say one more thing about pricing. Mr. Jaquier said we are selling at below the cost of 50 percent of the producers. That also means we are selling above the cost of 50 percent of the producers. I think it was Congressman Moore this morning who asked what is the cost of U.S. producers versus the Russian selling price. I also

heard, I guess it was Congressman Frenzel who said it, reference to an $80 selling price figure.

We have testified to the ITC our price is well in excess of $100 and unfortunately the last batch of ammonia we bought from the Russians at market in February is, as Mr. Jaquier stated, and unfortunately for Occidental, $19 to $20 higher than the present market price. We win some and lose some, but when we buy the ammonia, we buy it at the market price.

As to the cost, you should be aware that approximately 19 percent of U.S. production of ammonia, most of it in the so-called sugar bowl area in the Mississippi Gulf, is produced at less than $50 a ton. There is a heck of a lot of $40 ammonia in this country.

Finally, Congressman Russo, I am not sure what kind of answer you got when you asked about the fact that the U.S. exports four times as much nitrogen as we import. They did tell you, and quite distinctly, that it is basically accurate that hydrous ammonia is exported to the tune of three or four times what we are bringing in from the Soviet Union.

I submit, therefore, that if for any kind of a crisis or for whatever reason the approximately 1.5 million tons equivalent of nitrogenous fertilizers we are bringing in from the Soviet Union were cut off the United States could very quickly and easly divert its current export shipments to that degree to satisfy the demands for the American farmer.

Finally, what would happen if this bill were to pass and our deal were to die? I believe the price of ammonia again would go through the roof as it did in 1974, especially in the short run and particularly on the west coast where there would be only one supplier, who would be a competitor of all the companies which would have to buy their ammonia from that supplier.

I think that would be a dreadful result, particularly when this country is trying to reduce inflation and at a time when the American farmer is seriously pinched by a cost-price squeeze.

If you want to see lower income for the farmers and a real threat to their economic viability, I would suggest those would be the result of this bill. If you want to help the American farmer and consumer, this bill should be defeated. Thank you.

[The prepared statement follows:]

STATEMENT OF JAMES J. GALVIN, OCCIDENTAL PETROLEUM CORP.

Mr. Chairman and members of the Committee, my name is James J. Galvin. I am President of the Agricultural Products Group of Hooker Chemical Co., a wholly owned subsidiary of Occidental Petroleum Corp. Occidental, pursuant to an unprecedented 20-year agreement with the Soviet Union which was supported by both the Soviet and U.S. Governments, has been the exclusive importer of Russian ammonia since 1978. I request that my full statement, which includes an economic analysis of H.R. 7087 prepared by Economic Consulting Services, be incorporated in the record.

I appear today to oppose the proposed bill that would impose a 15-percent ad valorem duty on anhydrous ammonia entering under TSUS item 480.66 from Communist countries. We believe that there is neither need nor justification for this bill. As my testimony today will demonstrate, (1) the domestic industry is neither injured nor threatened with injury by imports of ammonia from the U.S.S.R., and (2) the United States is not and will not become dependent on Soviet ammonia imports.

I. THE INTERNATIONAL TRADE COMMISSION HAS RECENTLY DETERMINED THAT THE DOMESTIC AMMONIA INDUSTRY IS NEITHER MATERIALLY INJURED NOR THREATENED WITH MATERIAL INJURY BY IMPORTS OF SOVIET AMMONIA

First, the issue of injury or threat of injury to the domestic ammonia industry has been thoroughly investigated and resolved by the International Trade Commission. On April 11, 1980, the Commission determined that no market disruption existed with respect to the domestic ammonia industry. What that means is that the Commission, by a 3–2 majority, found that the domestic industry is neither injured nor threatened with injury by Russian ammonia imports. The majority emphasized that the domestic industry's prices, profits and utilization rates have risen rapidly and substantially, despite increasing imports from the U.S.S.R. Emphasizing that all indicators are showing positive economic trends for the domestic industry, and citing numerous favorable economic forecasts, the majority also found no threat of future material injury. The Commission further concluded that there was absolutely no casual link between the imports of Soviet ammonia and any past problems claimed to be suffered by U.S. ammonia producers.

We at Occidental were, as you might assume, very pleased with the Commission's decision. We were pleased, not just because the decision prevented the imposition of quotas on our imports, but also because it vindicated a consistent and careful marketing program by which we have sought to make sure that we would not injure U.S. producers or disrupt the market. I will discuss that program in some detail in just a moment.

II. IMPORTS OF RUSSIAN AMMONIA POSE NO THREAT OF OVERDEPENDENCE

The second point I want to make is that there is no danger whatsoever that the United States is going to become dependent on imports of Russian ammonia. Our imports are not part of any alleged Soviet scheme to disrupt or dominate the U.S. market. Rather, these ammonia imports are an integral part of a 20-year barter agreement between Occidental and the U.S.S.R. This counterpurchase agreement—the first and by far the largest of its kind—was a milestone in East-West trade, and was thoroughly reviewed and enthusiastically supported by the United States and key executive branch agencies. Clearly, such strong support would not have been forthcoming if such imports were considered to pose a threat of imprudent dependence.

Imports of Russian ammonia are small, and will remain at modest levels, in relation to U.S. consumption. Soviet ammonia constituted only about 4 percent of the U.S. market in 1979 and will constitute, at most, 6 percent by year end. The maximum contract limits for future years ensure that our imports will never exceed 10 percent of the market. And that peak will not be reached until 1982 or 1983 at the earliest. As the imports level off at these quantities in accordance with our agreements, and as domestic consumption continues its historic pattern of growth, the market share percentage represented by Russian ammonia will steadily decline. In short, the volumes which we will be importing simply cannot reasonably be construed as "dependence", in any meaningful sense of that term.

Let me also emphasize that the dependence argument falls flat on its face when you consider the fact that in 1979 Occidental imported less than 800,000 tons of ammonia (or 656,000 tons of nitrogen equivalent), while the domestic industry exported 3.5 million tons of nitrogen equivalent. Obviously, any deficiency of ammonia in this country could be compensated for by simply redirecting a small portion of domestic producer's nitrogen exports.

I think it is worth taking just a moment to talk in some detail about how we market this ammonia in the United States. Our entire marketing policy—and indeed the terms of our agreement with the Russians—has been designated to avoid market disruption. The agreement itself requires that sales be at prevailing market prices, and it makes it very clear that Occidental—rather than the U.S.S.R.—is to contract with the customers in the United States. Finally, the agreement provides that steady and predictable quantities of ammonia are to be imported each year.

The nondisruptive nature of our U.S. marketing efforts was clearly demonstrated by the ITC staff's investigation. The staff found no instance in which our prices had been below prevailing U.S. marketing prices. They found no instance in which we had taken a sale away from an American producer.

These findings may surprise some of you who have been hearing U.S. producers claim that our imports pose a dealy peril to them. But the findings don't surprise me at all. With respect to prices, we have every incentive (not to mention a contractual obligation) to get the highest price possible for our ammonia, because increased revenues from the ammonia sales enable the Russians to buy more phosphates from us. And as to "lost sales", we specifically seek out customers who would not be buying from domestic firms in any event, either because of their geographic location or because of their contractual needs.

The domestic producers contended in the ITC case that our long-term contracts with fixed annual price escalators were somehow an unfair practice. The Commission majority rejected that argument, and rightly so. Many U.S. producers could, if they were willing, offer exactly the same type of contract that we offer. Occidental's contracts are "long-term" on tonnage only; prices are negotiated on a one-, two-, or three-year basis. The annual price escalators contained in the contracts are negotiated on the basis of then-prevailing rates of inflation and the parties' best estimates of future market conditions. That sort of contract makes economic sense, and there is nothing at all "unfair" about it.

Indeed, I want to emphasize to this Committee that there is nothing at all "unfair", "injurious" or "predatory" about our sales of Russian ammonia. We are not trying to take over the U.S. market. We are not trying to injure U.S. producers. We are simply buying and reselling ammonia in known and limited quantities, so that the Russians will be able to buy our phosphates.

III. THE PROPOSED IMPORT DUTY WOULD BENEFIT FOREIGN SUPPLIERS RATHER THAN U.S. PRODUCERS AND WOULD HAVE AN INFLATIONARY IMPACT

The duty proposed in this bill would not benefit domestic ammonia producers—it would merely benefit other foreign suppliers of ammonia. Occidental's customers, seeking to avoid the higher prices that would result from the imposition of the proposed duty, would in most cases look to other offshore sources to replace the Soviet ammonia. As I indicated, this is due to the geographical or logistical peculiarities of these customers and the fact that domestic ammonia is simply not offered on the long-term contract basis that our customers need.

In certain geographical areas, however, Occidentals' customers are unable to turn to other offshore suppliers. In these areas, they would be forced to pay higher prices charged by Occidental as a result of this duty or else be at the mercy of their competitors in buying ammonia. For example, in California we sell to fertilizer companies which use the ammonia to make other fertilizers. Those customers would have no choice but to pay Occidental's higher prices, since the only alternative source of supply in that market is a single domestic ammonia producer—a company who is at the same time a competitor of these customers in sales of upgraded ammonia fertilizers.

From an overall market standpoint, adoption of this tariff would worsen already tight supply conditions and fuel inflationary pressures on ammonia prices. This would have an adverse impact on the American farmer, who would be forced to pay higher prices for fertilizers. Ultimately, these higher prices would adversely affect the American consumer in the form of increased food costs. Attachment A to my testimony contains a detailed economic analysis of the inflationary impact of the proposed duty.

The domestic ammonia industry, which is healthy and will remain healthy in the future, is not in need of protection. Nor is the U.S. ever going to be dependent on Russian ammonia. The proposed duty would injure U.S. purchasers of this ammonia, purchasers of upgraded ammonia fertilizers, the American farmer and the American consumer. On behalf of Occidental Petroleum Corporation, I therefore urge Congress not to enact the proposed tariff on anhydrous ammonia from Communist countries.

ATTACHMENT A

AN ANALYSIS OF THE INFLATIONARY IMPACT OF H.R. 7087

SUMMARY

H.R. 7087 would impose a 15-percent ad valorem rate of duty on anhydrous ammonia imported from the Soviet Union and other Communist countries not enjoying MFN treatment. Such imports currently enter the United States duty-free. Under current and prospective economic conditions, any such duty would have serious adverse economic ramifications. In particular, it would add further, upward pressures to ammonia prices that are already escalating rapidly, increase

the fertilizer costs borne by farmers, and ultimately lead to reduced agricultural output and higher food prices.

Under these conditions, the imposition of a 15-percent tariff on anhydrous ammonia imported from the Soviet Union cannot be justified, as a serious, inflationary situation would simply be further aggravated.

AMMONIA PRICES ARE ALREADY RISING RAPIDLY

Ammonia prices have already been subjected to severe, inflationary pressures since early 1979. This is illustrated in Chart 1, which shows the recent behavior of three different indicators of anhydrous ammonia prices: the Bureau of Labor Statistics' producer price index for anhydrous ammonia, the retail prices paid by farmers for direct application (DA) anhydrous ammonia, and the Gulf Coast spot price for anhydrous ammonia.

All three ammonia price indicators have risen sharply during 1979 and the first quarter of 1980. The producer price index for anhydrous ammonia (1967=100), for example, climbed from 180.4 in the first quarter of 1979 to 241.6 in the first quarter of 1980, an increase of 33.9 percent in just 1 year. The retail prices paid by farmers for DA anhydrous ammonia, and for nitrogen fertilizers in general, necessarily have risen in conjunction with the increase in the producer price index for anhydrous ammonia. Whereas farmers were able to purchase DA ammonia for $171.00 per material ton during the first quarter of 1979, the price that they had to pay for this key fertilizer rose to $234.65 per material ton in the first quarter of 1980, an increase of 37.2 percent. The Gulf Coast wholesale spot price for anhydrous ammonia increased even more sharply during this period, from $92.93 during the first quarter of 1979 to $152.16 during the first quarter of 1980, an increase of 63.7 percent.[1]

The prices of anhydrous ammonia and nitrogen fertilizers are likely to continue to increase rapidly during the next several years, spurred by the strong agricultural demand for nitrogen fertilizers and by higher prices for natural gas, the key raw material in ammonia production. Despite the recent partial embargo for U.S. grain shipments to the Soviet Union, the demand for U.S. grains such as corn and wheat, as well as the demand for other nitrogen-using crops such as cotton, remains strong, and U.S. Department of Agriculture (USDA) data indicate that planted corn, wheat and cotton acreages in the current year remain above their already high 1979 levels: corn acreage is expected to increase from 80 million acres in 1979 to 82 million acres in 1980; wheat acreage is expected to increase from 71.9 million acres in 1979 to 79.5 million acres in 1980; and cotton acreage is expected to increase from 13.9 million acres to 14.8 million acres.[2]

Chase Econometrics provides perhaps the most respected private forecasts of economic trends in the fertilizer markets. In its latest comprehensive forecast (March 1980), Chase continues to project a strong demand for nitrogen fertilizers throughout the 1980's. The report estimates that the planted acreages of corn, wheat, and cotton will remain at approximately their current, high levels in 1981, and that as a consequence the agricultural demand for nitrogen will remain strong, increasing by 5.4 percent between 1979 and 1980, and by a further 2 percent between 1980 and 1981. Looking further ahead, Chase forecasts that agricultural usage of nitrogen will increase at an average annual rate of 3.9 percent through the 1980's.

This continued strong demand for nitrogen fertilizers will place substantial upward pressure on nitrogen fertilizer prices in the near- and mid-term. Chase's projections for the producer price index for anhydrous ammonia, the retail prices paid by farmers for DA anhydrous ammonia, and the Gulf Coast spot price for anhydrous ammonia are shown in Chart 1. In each case, substantial increases are forecast. The Chase forecasting model predicts that the producer price index will rise from 241.6 in the first quarter of 1980 to 277.7 in the first quarter of 1981 and to 295.3 in the second quarter of 1981; the retail price paid by farmers for DA ammonia will increase from $234.65 per material ton in the first quarter of 1980 to $269.69 per ton in the first quarter of 1981 and $286.83 per ton in the second quarter of 1981; the Gulf Coast spot price will rise from $152.16 per ton in the first quarter of 1980 to $174.88 per ton in the first quarter of 1981, and $185.99 per ton in the second quarter of that year.

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[1] Chase Econometric Associates, Inc., "Fertilizer Model Forecasts, A Bimonthly Report," March 1980.

[2] U.S. Department of Agriculture, Crop Reporting Board, "Prospective Plantings," Apr. 17, 1980.

THE PROPOSED TARIFF WILL EXACERBATE AN ALREADY "TIGHT" SUPPLY/PRICE SITUATION

Given the rapidly escalating prices of anhydrous ammonia and of nitrogen fertilizers generally, any curtailment or imposition of duty on U.S. imports of anhydrous ammonia from the Soviet Union, or from any other country, will simply add to existing inflationary pressures. Virtually all effective domestic capacity to produce anhydrous ammonia is now being fully utilized. Further price increases thus cannot be expected to bring about increased domestic production in the near future.

Chart 2 shows the steady increase in domestic capacity utilization rates for anhydrous ammonia, rising from 81.3 percent in fertilizer year 1979 to 88.9 percent in fertilizer year 1980, and 90.9 percent in fertilizer year 1981. Chase forecasts that capacity utilization rates should remain above 90 percent throughout the 1980's. These utilization rates represent essentially full utilization of domestic ammonia capacity. Indeed, current utilization rates are nearly equal to those which existed in the 1974–1975 period, when acute shortages caused ammonia prices, as measured by the BLS producer price index, to increase nearly three-fold between 1973 and 1975.

It is also clear that only a very severe increase in the ammonia price level could be expected to bring about any significant reopening of those domestic ammonia facilities which were shut down in the late 1970's. These were older and/or smaller facilities, characterized by significantly higher costs of production than those plants which today remain in operation. On this subject, the International Trade Commission staff has noted that: [8]

"Of the U.S. plants that have been closed or idled since 1977, 30 are small plants with annual capacities of less than 200,000 short tons per year, 5 are medium-sized plants with capacities of 200,000 to 340,000 short tons per year, and none is a large plant with an annual capacity of more than 340,000 short tons."

Many of the closed plants are also located either in areas where natural gas prices are too high to justify use in producing anhydrous ammonia, or in areas where secure supplies of gas are simply unavailable.

THE ADVERSE IMPACT OF THE PROPOSED TARIFF ON OCCIDENTAL'S CUSTOMERS FOR SOVIET AMMONIA WOULD BE SEVERE

Since U.S. producers are already operating at full effective capacity, present purchasers of Soviet ammonia are likely to find it very difficult to find alternative suppliers at economic prices if, as appears likely, the imposition of a duty resulted in cessation of Soviet imports.

In the short term, these customers would have little choice other than to purchase their required supplies on the volatile U.S. spot market. The volume of U.S. ammonia which is actually traded in the spot market accounts for only about 5–10 percent of total U.S. ammonia sales, while imported ammonia from the Soviet Union at present accounts for approximately 5 percent. Given these relationships, and with U.S. supplies tight, major new purchases in this market would likely send prices to astronomical levels. Indeed, the cessation of Soviet imports could lead to as much as a doubling of demand in the spot market. This would necessarily have a dramatic impact on ammonia spot prices, and would probably lead to shortages in certain geographic areas.

Over the longer term, Occidental's present customers might eventually secure new, long-term contracts to serve their ammonia requirements. In this regard, however, it is relevant that at present Soviet imports constitute an alternative source of supply for wholesale customers in certain geographical areas which might otherwise suffer from only limited domestic competition. This is especially true in Florida and California, where there are only one or two suppliers of anhydrous ammonia other than Occidental. Absent a long-term foreign supplier to these areas, prices might rise higher than they would otherwise, and the probability of shortages occurring is heightened. In short, the nature of competition affecting the present customers for Soviet ammonia, combined with the problems of geography and logistics of supply to these customers, make it likely that their ultimate alternative suppliers will be other foreign, rather than domestic, producers.

[8] United States International Trade Commission, "Anhydrous Ammonia From the U.S.S.R.," Report to the President on Investigation No. TA–406–5, under Section 406 of the Trade Act of 1974, USITC Publication 1006, October 1979, p. A–24.

THE ULTIMATE RESULT OF THE PROPOSED TARIFF WOULD BE LOWER AGRICULTURAL PRODUCTION AND HIGHER FOOD PRICES

The direct increase in ammonia prices due to the imposition of a duty or as a result of the likely cessation of Soviet imports will ultimately be passed on to U.S. farmers in the form of higher nitrogen fertilizer prices. Such higher prices would not only increase farmers' cost of doing business, but would also lead to reduced agricultural use of nitrogen fertilizers. This is because the ratio of crop prices to fertilizer prices is a key determinant of agricultural demand for fertilizers. When this ratio increases, farmers have an incentive to increase their purchases and application rates of fertilizers; conversely, when this ratio falls, farmers have an incentive to reduce their fertilizer usage.[4]

The ratio between the prices of the major nitrogen-using crops and the price of nitrogen fertilizer is expected to fall during the next several years without the imposition of a tariff on ammonia imported from the Soviet Union. This is illustrated in Table 1, which shows the current and projected future ratios for corn, wheat and cotton prices to the price of nitrogen fertilizers. In the case of corn, this ratio is expected to fall from 1.47 in the 1979 crop year to 1.34 in the 1980 crop year and 1.13 in the 1981 crop year. The price ratio for cotton is also expected to fall consistently during this period, from 38.64 in the 1979 crop year to 36.5 in the 1980 crop year and 27.0 in the 1981 crop year. The ratio of wheat to nitrogen prices should increase slightly (from 2.08 to 2.14) between the 1979 and 1980 crop years, but is then expected to fall to 1.67 in the 1981 crop year. These already-forecast declines in the crop/fertilizer price ratios will have a significant impact on fertilizer consumption patterns, as reflected in the following analysis by Chase:

"We expect 1981 usage to slow to only 2 percent, or 12 million tons. We remain guarded, however, in our usage projections, as *crop price to fertilizer price ratios decline and farm income continues to decline. Farmer-buying resistance could thus intensify as calendar year 1980 progresses.*" [5] [Italic added.]

TABLE 1.—RATIO OF SELECTED CROP PRICES TO AVERAGE FARM LEVEL NITROGEN PRICES, 1979–81 [1]

Fertilizer year [2]	Crop		
	Corn	Wheat	Cotton
1979	1.47	2.08	38.64
1980 [3]	1.34	2.14	36.48
1981 [3]	1.13	1.67	26.95

[1] The crop/fertilizer price ratio has been calculated by dividing the farm level price for each crop by the average price or all nitrogen, and multiplying the result by 100.
[2] Fertilizer years run from July of the previous calendar year through June of the current calendar year.
[3] Estimates based on projected prices.

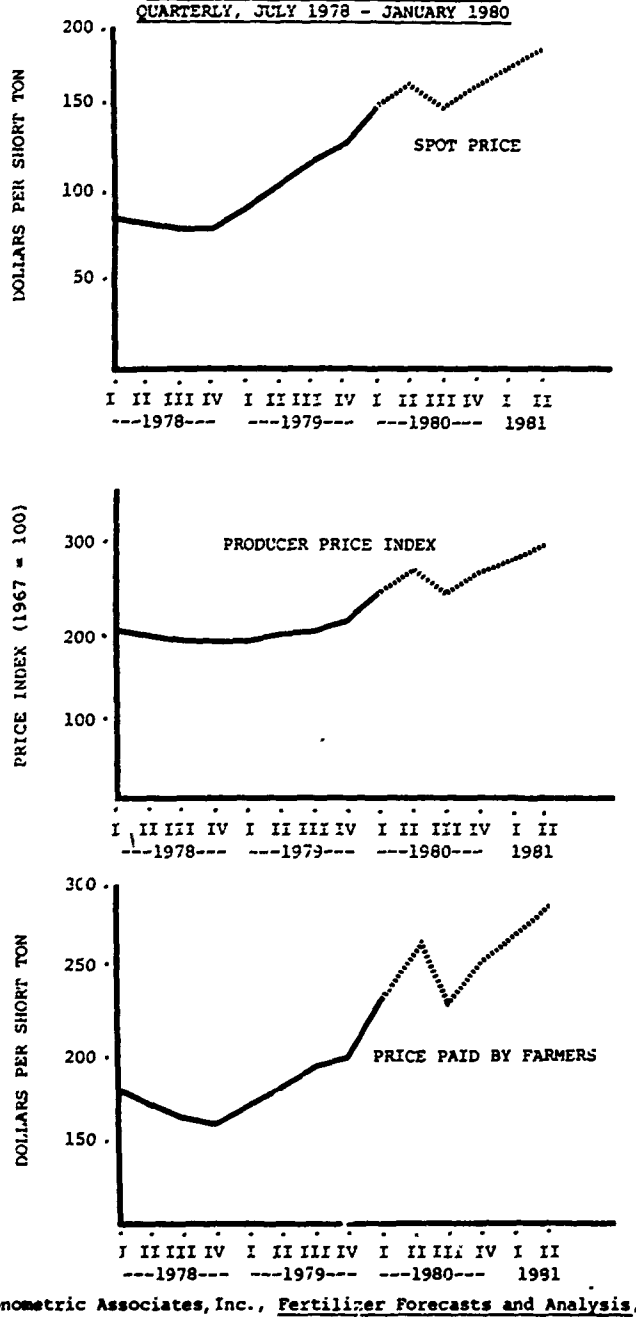
Source: Chase Econometric Associates, Inc., "Fertilizer Forecasts and Analysis; The Decade of the 1980s," March 1980.

The imposition of a duty on imported ammonia from the Soviet Union would cause still further deterioration in these crop-nitrogen price ratios. If, for example, the duty increases nitrogen fertilizer prices by 15 percent, then the estimated crop/fertilizer price ratios for the current 1980 crop year would fall by approximately 13 percent in each case; from 1.34 to 1.17 for corn, from 36.48 to 31.72 for cotton, and from 2.14 to 1.86 for wheat. Such deterioration in the crop/fertilizer price ratios could lead to markedly lower application rates. Since nitrogen fertilizer application rates are a major determinant of crop yields, especially for corn, wheat and cotton, this reduction in application rates would in turn lead to reduced U.S. production of these important crops, with a resulting increase in food prices. These effects would be even more severe if the duty caused a cessation of Soviet imports and a resultant increase in domestic market prices beyond the level of the duty, itself. Moreover, should the anticipated price increases and shortages occur during the upcoming fall planting season, leading to substantially reduced application rates at this crucial time, the magnitude of the ultimate impact on food prices would be maximized.

[4] For a discussion of this relationship, see John R. Douglas, Jr., "Fertilizer Pricing," TVA Fertilizer Conference, Louisville, Ky., July 31–Aug. 1, 1974, pp. 36–43. Also, see James P. Houck and Paul W. Gallagher, "The Price Responsiveness of U.S. Corn Yields," American Journal of Agricultural Economics, November 1976, pp. 731–734, for a discussion of the responsiveness of corn yields to the relative prices of fertilizer and corn.
[5] Chase Econometrics, p. 31.

Chart 1

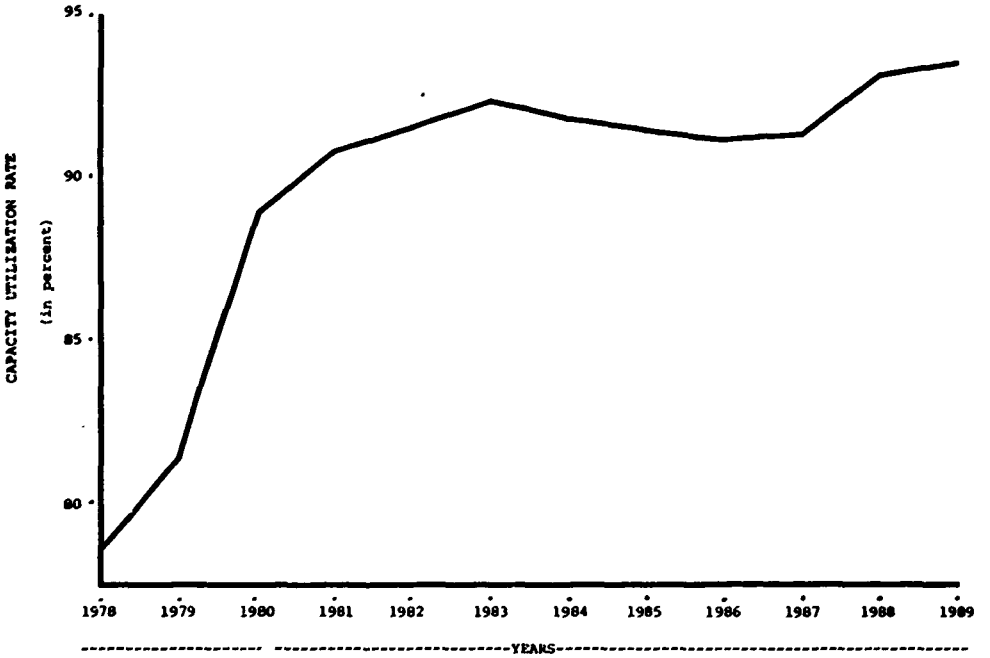
THE SPOT PRICE, PRODUCER PRICE INDEX, AND THE PRICE PAID BY FARMERS FOR ANHYDROUS AMMONIA, QUARTERLY, JULY 1978 - JANUARY 1980



Source: Chase Econometric Associates, Inc., Fertilizer Forecasts and Analysis, March 1980.

Chart 2

FORECAST CAPACITY UTILIZATION RATES FOR THE ANHYDROUS AMMONIA INDUSTRY, ANNUALLY, 1978-1989



Source: Chase Econometric Associates, Inc., Fertilizer Forecasts and Analysis, March 1980.

Mr. JONES. Thank you very much, Mr. Galvin. You indicated strong support of the ITC's latest decision that found to injury or threat to the domestic injury. I assume you disagreed with its previous decision. What happened in that intervening time? What changed?

Mr. GALVIN. Of course, there was a change in one of the Commissioners, one of the Commissioners who voted against us has retired, and the new Commissioner voted for us on the second go around.

Mr. CUNNINGHAM. Also the ammonia market went up 50 percent, which makes it difficult for the ITC to fund in favor of an industry which claims it is suffering from depression of prices.

Mr. FRENZEL. Thank you, Mr. Galvin, for your testimony.

You indicated when you started that Occidental was going to carry the brunt of any duty that was levied and when you closed you indicated that the consuming farmers might carry it. Who will?

Mr. GALVIN. What I was trying to imply, sir, was that we can't pay for the duties and therefore we are not going to bring the Soviet ammonia in here and certainly the price of ammonia in the shortrun is going to go up to the farmer because at the present time there is a tight demand and you can't pull 1 million tons out overnight.

Mr. FRENZEL. If you don't have to bring it in, you mean you don't have long-term agreements as to quantity with the Russians? You can stop at any time.

Mr. GALVIN. The whole deal would fall apart. The 20-year deal would be down the drain because we could not ship them the phosphates and

we would not be buying the ammonia and they would not be buying from us.

Mr. CUNNINGHAM. The lawyers would make a lot of money on who is breaking what contracts, whether there is an excuse for nonperformance based upon the imposition of a duty or that sort of thing.

Mr. FRENZEL. The lawyers always make money, and I have seldom seen these contracts without some sort of provision for acts of God, forces of nature, even new duties that were unanticipated.

How long are your agreements on selling? You were saying your customers had contracts with you and, therefore, they could not absorb the duty.

Mr. GALVIN. From the beginning, our longest contract, on tonnage, is up to 10 years, but on the pricing we roll over either every year, every 2 years, or every 3 years maximum. In other words, roughly speaking, we might have half a million tons under contract this year, all of which will be repriced either this fall or next fall. We do not have any truly long-term price contracts, and you are quite correct, sir, you could then surmise we will have to add this surcharge on to the customers at that time, and they won't pay it.

If you have $180 ammonia and you are going to ask them to pay another $27 over and above the market price, they are going to ask, "Who is going to pay me for it?"

Mr. FRENZEL. I think the allegation of your competitors is you might not be operating at the market price.

Mr. CUNNINGHAM. Representative Moore said you would get claims from one party that we are underselling the market, and other claims that we are not underselling, and the governmental people here were asked for their view. The Government has in fact taken a view in the one study that has been done on this issue, the study made by the International Trade Commission staff. The result in that was unequivocably set forth at page A-72 of the staff study. Indeed, the same conclusion was reached in both ammonia proceedings, and that is that there was no underselling; that the prices were at market price.

Mr. FRENZEL. Even though you have long-term contracts that extend to the fall, is that customary trade practice? Do your competitors offer the same kind of contract?

Mr. GALVIN. Basically, no.

Mr. CUNNINGHAM. That is why they come to Occidental, because they cannot get long-term contracts, not that they can't get long-term prices.

The International Trade Commission staff found only eight long-term contracts in the entire industry. That is at page A-68 and A-72 of their report.

Mr. FRENZEL. Is the price of anhydrous ammonia rather volatile?

Mr. GALVIN. Yes, indeed.

Mr. FRENZEL. What protects you in these long-term contracts?

Mr. GALVIN. Occidental really acts as a middleman for the Soviet Union. Our agreement says we will set our U.S. prices at market levels, from which we will take a 2½-percent discount, and that is all we make on the ammonia. It is not our intention to make money on the ammonia. It is our intent to sell for the best price we can competitively realize, in order to maximize the revenues that go to the Soviet Union so they

can pay us for the millions of tons of phosphate we are shipping to them every year.

Mr. FRENZEL. Was the deal structured in such a way that the tons of anyhydrous would be equal to the super phosphoric acid?

Mr. GALVIN. It is expected the exchange of products will bring about an equal exchange of value but, obviously, it gets out of balance in any 1 year. Of course, very significantly, at least half or three-quarters of the products we will buy—and we buy potash and urea in addition to ammonia—will not come to the United States. They are going now to the rest of the world, not the United States and, therefore, it is not U.S. currency paying for all this stuff.

Mr. FRENZEL. As you heard me state earlier, it was the intention of the author of this legislation to spread some of the burden of growth to markets other than the United States; namely the EEC where there is, namely, a duty of about 11 percent, and that is where the magic number of 15 came from. Above that we would have considerably less trading.

Mr. Chairman, I have no further questions.

Mr. JONES. Thank you, Mr. Frenzel.

Did I understand your statement there is no profit in it for you? You are not a Government institution, are you?

Mr. GALVIN. No.

I will repeat, the contract states for us to sell at market prices, and it behooves us to get market prices. The more the Russians get for ammonia, the more hard currency they have. We are entitled to only 2½ percent discount because, obviously, we expect to make the money on the phosphates we are shipping to them.

Mr. RUSSO. Is the domestic ammonia market competitive?

Mr. GALVIN. Yes.

As Mr. Jaquier was explaining, there is a whole different number of markets. There is a Midwest market, a gulf coast market, a west coast market. They are all competitive, but because of the freight problems, there are substantial differences in price in these various markets.

Mr. RUSSO. As I understand it, if the Russians own the gas and the plants, it would be very hard for our country with natural gas decontrol coming into effect to compete with the Russian product; is that correct?

Mr. GALVIN. No, sir, I don't believe that is correct. The supply/demand sets the price of ammonia in the United States, not Russian imports.

Mr. RUSSO. What happened between the first ITC hearing and the second one?

I believe the gentleman mentioned there was a 50-percent increase in price. What caused the 50-percent increase in price?

Mr. GALVIN. The combination of two things. The competitors in the United States had to get more money because of their cost of production going up, one; and, two. I think there was a continued and there is a continuing tightening in the supply/demand balance.

Mr. CUNNINGHAM. The Occidental contract with the Soviet Union specifically requires that Occidental sell in the United States at or above the U.S. market price.

The Soviets specifically state that they will not accept under the contract any price below the U.S. market price.

Also relevant here, I think——

Mr. RUSSO. If that is a fact, how does it hurt our economy?

Mr. CUNNINGHAM. We submit it does not.

Mr. JONES. If you say you are 50 percent below the sales price——

Mr. CUNNINGHAM. No, above and below cost of production. And that is another area in which there is either some misunderstanding or misinformation, because statements were made that petitioners have submitted to the ITC supposedly unrefuted calculations which show that the Russians attach a zero cost to their gas. We do not know what the Russians' actual costs of gas are, but we have submitted calculations to the ITC for ocean freight and other costs working back from our import prices, and they come out with a cost of gas, a substantial cost of gas, above the cost of gas for the Sugar Bowl producers in Louisiana that Mr. Galvin referred to, and while I can't say that this precisely represents the Russians' cost of gas, I think it is not at all accurate to say the Russians are giving their gas away here.

Mr. RUSSO. Why do we need any Russian ammonia anyway if we have all that excess capacity we send to other parts of the world? Why do we have to import anything at all?

Mr. GALVIN. I suspect there is no true, absolute need. I think back in 1973 when Dr. Hammer did the deal, he had two things in mind. Our natural gas supplies were very finite and declining every year.

Mr. RUSSO. It seems with price increases, they are able to find more natural gas.

Mr. GALVIN. That has been true recently. Dr. Hammer said we have a dwindling natural resource. The Russians have natural gas coming out of their ears, so why don't we do a deal with them and let them be the source for the nitrogen.

At th same time, it was an era when the United States was interested in improving trade with the Soviet Union and it was the biggest deal at the time, and it was done again partly for that reason to improve trade.

Mr. CUNNINGHAM. I would add in addition to the U.S. industry having the gas it has enough capacity to supply the American market. When the U.S. producers were asked about capacity, they said they had the capacity now—and, parenthetically, I would wonder how an industry can argue dependence and still say they have the capacity to supply the market—but they had a question about 2 years out.

Mr. Jaquier and others submitted to the ITC a table showing their capacity all the way out to 1985. I have copies of that table here, which I would like to give to the subcommittee. The table explicitly says through 1985 that the petitioners, that is, the U.S. industry, will have sufficient capacity to meet the entire U.S. demand including exports. They will have 1,600,000 tons more than enough capacity to meet all U.S. demand, plus the exports.

I would like to submit this to the subcommittee, if I may.

Mr. JONES. Include it for the record.

[See p. 626.]

Mr. RUSSO. Are the Russians a dependable source or will they do like the Mexicans—if the price goes up, they will drop our market and go somewhere else?

Mr. GALVIN. I believe they are dependable. I am rather sick and tired of hearing this word "unreliable" from the ad hoc committee. The

Soviet Union, in the first year of our contract, 1977, delivered every ton that was scheduled. In 1978, they delivered every ton that was scheduled. In 1979, when the worst winter in 100 years hit the Soviet Union which crippled their chemical industry, and they had to divert gas for home uses, their shipments in the first 2 months were literally nil. By the end of the year, however, they were exactly on the original schedule for the year, even though in 1979 European markets were substantially—and I mean $50 a ton—higher than the U.S. domestic market.

In 1980, we already have a schedule for the full year. The U.S. price is much more in balance with the European price today, but we are buying approximately 100,000 tons a month.

I have no doubt in my mind that the Soviet Union will live up to the letter and spirit of its agreement with us in the United States.

Mr. RUSSO. When you first entered into this deal with the Soviets, was the output always expected to be around 10 percent?

Mr. GALVIN. When our market was at max, I was not around. I presume when it went through the Department of Commerce in 1973 and the other agencies they looked at the expected U.S. consumption of ammonia out into 1985 and they looked at the 2.1 million tons of Russian ammonia, and they said the imports will peak around 9 or 10 percent, and that does not represent any dependence. I assume that is what they did.

Mr. RUSSO. Do you expect it to grow to more than 10 percent?

Mr. GALVIN. No; it can't. The Russian deal limits ammonia to 2.1 million tons until 1987, and then it drops to a 1½ million tons in 1987.

There is no way. We are the sole importer of Russian ammonia to this country. There is no way it can go beyond the finite levels of our deal. We do not have any more phosphates to sell them, so we can't buy anymore ammonia.

Mr. FRENZEL. Are you now impeded in any way from shipping phosphoric acid, or whatever you are shipping to the Russians?

Mr. GALVIN. Yes, sir. The President by Executive order totally embargoed the shipment of all phosphate materials in any form. Unfortunately, we are the only ones shipping phosphates in any form. So, we are shipping nothing to the Soviet Union.

Mr. FRENZEL. Aren't your lawyers going to get a workout on that?

Mr. GALVIN. Yes; ours and possibly the Government's.

Mr. FRENZEL. If the embargo is maintained, is it likely that the Russians will continue to ship anhydrous?

Mr. GALVIN. I was there less than 2 weeks ago, and we agreed and I think we recognized my feeling, staying away from the politics, that it was unlikely that the embargo would be lifted in the near term. I suggested possibly the end of this year. Obviously, it depended upon political developments. The Russians are certainly not happy, but they nonetheless agreed in writing to completely continue all other elements of our agreement, assuming this will just be some kind of hiatus in the 20-year deal.

I must say, however, that if the embargo runs on for another 2 years, or whatever, I am quite certain that the deal would die.

Mr. FRENZEL. According to your testimony, this is a bit of a poke with a sharp stick for Occidental. You told us you didn't make any money selling anhydrous ammonia; that you made it selling the phosphorous acid.

Mr. GALVIN. It is a double whammy.

Mr. FRENZEL. Your selling of anhydrous ammonia is just an exercise now?

Mr. CUNNINGHAM. It is being done hoping the situation will hold together until we can resume the profitable side of the deal.

[The following was subsequently received:]

RESPONSE TO QUESTIONS ASKED BY CONGRESSMAN RUSSO OF MR. GALVIN

Question. How do current export prices of U.S. produced ammonia compare with the price of Soviet ammonia imported by the United States?

Answer. According to Census Bureau customs data, during the month of March 1980 the average unit value of U.S. ammonia exports was $102.64 per short ton while the value of ammonia imported from the Soviet Union was $100.23.

Question. What has been the relationship between recent increases in U.S. ammonia prices and increases in domestic natural gas prices?

Answer. The lowest ammonia prices in the last five years were reached in 1978. In May of that year the spot price of ammonia bottomed at $78–83 per short ton (f.o.b. U.S. Gulf). In May 1979 the spot price reached $105–112 a ton, a 35 percent increase. In May 1980 the spot price is around $135–140 per ton, 27 percent higher than a year earlier.

Prices farmers pay for anhydrous ammonia have increased in a similar fashion after reaching the 5 year low of $160 per ton in December 1978. Farm level prices increased steadily reaching $199 in December 1979, 24 percent higher than a year earlier. By March 1980 (the most recent farm level price available) the U.S. farmer paid, an average, $229 per ton, 15 percent higher than just 3 months earlier.

The ITC recently conducted a survey of the domestic anhydrous ammonia industry and learned that the average price paid by ammonia producers for natural gas increased 22 percent from $1.27 per 1,000 cubic feet in 1978 to $1.55 in 1979. No similar ammonia industry statistics are yet available for 1980. However, Green Markets, a weekly fertilizer publication, publishes U.S. natural gas prices. In early 1979 firm gas contracts in the West South Central region (where most ammonia plants are located) were priced at $1.71/million BTUs and had increased 23 percent to $2.10 in early 1980.

From these data it can be concluded that spot ammonia prices have been rising significantly more rapidly in the past two years than have the prices of natural gas. Farm level ammonia prices have risen slightly faster than gas prices.

Mr. JONES. Thank you very much.

Our next witnesses, testifying on behalf of the National Knitted Outerwear Association, are Mr. Seth M. Bodner, executive director, and Ivan Gordon, president, Gloray Knitting Mills, Robesonia, Pa.

STATEMENT OF SETH M. BODNER, EXECUTIVE DIRECTOR, NATIONAL KNITTED OUTWEAR ASSOCIATION

Mr. BODNER. Mr. Gordon had to catch a plane.

I would like to address myself to four points raised by the administration witnesses this morning on H.R. 7047.

The first point was the elimination of provision for suspension of duties in the column 2 countries. We would have no particular objection to that. We would prefer the column 2 duties be included but much prefer having the bill passed. It is not that important an item.

With respect to the proposed elimination of used equipment which was included for duty exemption in this bill, the same view prevails. I am not sure why the Customs Service cannot distinguish between new and used equipment, but if that is going to be an administrative barrier, certainly we would have no objection dropping the distinc-

tion. There is a great deal of used equipment in the country already but by the same token the prices of used equipment are substantially less and, therefore, the duty is substantially less either way, so whether used equipment is included or not is not a material point for us.

With respect to limitation to machines over 20 inches that would be fine. The bill was not intended to cover the narrow bed equipment and that was a drafting error.

Mr. Vanik asked at one point if there was any indication by the machinery manufacturers that the duty savings would be passed through and I believe there had been some communications which would suggest that it will be passed through. The manufacturers I have spoken with said they would do that and I urged them to write to the committee and express that on the record so that we have some reason to believe the duty savings will be passed through.

I think the rest of the statement is covered.

[The prepared statement follows:]

STATEMENT OF SETH M. BODNER, EXECUTIVE DIRECTOR, NATIONAL KNITTED OUTERWEAR ASSOCIATION

The National Knitted Outerwear Association, New York, N.Y., represents more than 400 domestic manufacturers of knitgoods. These manufacturers produce about 85 per cent of all U.S. made sweaters.

In the person of Seth M. Bodner, Executive Director of the National Knitted Outerwear Association, the organization is here today to testify in support of H.R. 7047.

Since flat bed weft knitting machines are a primary tool of the domestic sweater producer and since none of these machines in needlebeds wider than 20 inches is now produced in the United States, import duties on the machinery impose an added burden to domestic manufacturers who have already been hard hit by heavy importation of the finished product, the sweater. Dropping the duties on machinery would reduce the price of the equipment to the sweater producer who would then be better able to purchase new machines and compete on a world-wide basis more successfully.

I am Seth M. Bodner, Executive Director of the National Knitted Outerwear Association, a not for profit corporation headquartered in New York City that represents domestic sweater producers who manufacture about 85 per cent of all U.S. made sweaters. These firms are located throughout the country including California and the Southern tier of States, although the heaviest concentration is in the Northeast, particularly in New York, New Jersey, Pennsylvania and New England.

With me today is Mr. Ivan Gordon, President of Gloray Knitting Mills, Inc., Robesonia, Pa. We are here to testify in support of H.R. 7047.

Modern equipment that is more versatile, more efficient and faster producing is one of the keys to operating successfully. For domestic sweater producers this means both the ability to meet fast changing fashion requirements and to compete more effectively against imports. The domestic sweater industry has been one of those most hard hit by imports, with more than 50 per cent of all sweaters available for sale over the retail counters today produced offshore. (Tables attached.)

To produce sweaters domestic manufacturers use what are known as sweater-strip machines. These include both circular machines (ones that have a cylindrical needlebed and produce goods in tubular form) and those that have a flat or horizontal needlebed and produce open-width fabrics. With the advent of new technical developments, particularly micro-computer operated electronic controls, flat bed weft knitting machines are now becoming the principal vehicle for domestic sweater knitters.

Flat bed weft knitting machines include V-bed flat machines, flat bed purl or links machines and flat bed machines with rotating yarn carriages. These machines are used to produce a variety of knitted garments including sweaters and sweater-shirts, plain and pleated skirts, dresses in a wide range of silhouettes, infants' wear, scarves, gloves, mittens and headgear, among other items.

It is estimated that 6,500 flat bend weft knitting machines are in place in U.S. plants today. Compared to other items, imports of flat bed machines are relatively small. In 1979, 868 V-bed flat knitting machines were reported imported by the Bureau of the Census with a value of $3.1 million. Many of these units were low-cost table-mounted toy and homecraft knitting machines not used by the domestic industry.

Today, none of the flat bed weft knitting machines employed by the domestic industry is produced in this country. Nor have any been produced in this country in the last decade, at least.

Only one company in this country produces a flat bed machine. But that firm, Lamb Knitting Machine Corp., produces a highly specialized unit with needlebeds no wider than 20 inches that is designed to turn out borders and trims, not sweater-strips. This company has not produced a sweater-strip machine in the past 20 years and, as far as we know, has no intention of doing so in the foreseeable future. We agree fully with proposals to exclude these items from the coverage of the bill.

The flat bed knitting machines used by the domestic industry are primarily from Germany, Italy, England, Japan and Switzerland. This means that the domestic sweater producer is being penalized twice by imports. First, by the finished product that now dominates the local marketplace, and secondly by duties that push up the price of much needed equipment.

The cost of that equipment has deterred domestic manufacturers from purchasing the very machines they need to become competitive with off-shore producers, both to recapture part of the domestic market by being able to knit goods in greater variety more quickly, and to put them in a position of competing abroad by being able to turn out quality goods at competitive prices, certainly with those in Europe.

New flat bed machines range in cost from about $40,000 for simpler, mechanically operated models to about $75,000 for the more sophisticated, microcomputer operated machines. Related equipment can run these costs to as much as $100.000.

By eliminating the duties on flat bed weft knitting machines wider than 20 inches, we now have an opportunity to alleviate the domestic industry of part of its burden. The savings per machine at the current duty rate for most favored nations would be between $2,000–$8,000. Those savings, the distributors for the foreign machinery manufacturers have assured us, would be passed on to their customers, the domestic sweater knitters.

We are in favor of passage of H.R. 7047 because we believe the effects will be entirely beneficial to the industry and the nation. By dropping the duties the machines would carry a reduced price-tag that would help domestic knitters to justify their purchase. By installing new equipment that is faster, more versatile and more efficient, domestic mills will be in a stronger position to gain new sales both at home and abroad. By increasing their volume, domestic mills would be in a better position to expand their productive capacities, hire more workers and purchase more equipment. Passage of this bill would act as a much-needed, well-timed boost to the domestic industry.

IMPORTS FOR CONSUMPTION, KNITTING MACHINES

	Quantity					Value (thousands of dollars)				
	1979	1978	1977	1976	1975	1979	1978	1977	1976	1975
Circular:										
Double knit[1]	281	795	823	778	462	6,293	15,867	18,681	17,414	10,676
Single knit[2]	392	391	289	182	111	5,474	4,762	3,203	1,629	1,038
Sweater strip and garment length[3]	26	205	151	66	57	712	2,473	3,288	1,585	1,118
Other	296	493	170	57	209	5,581	3,237	1,669	1,108	2,235
Total	995	1,884	1,433	1,083	839	18,690	26,339	26,841	21,736	15,067
V-bed flat	868	612	919	435	655	3,128	5,479	8,519	7,026	5,947
All others[4]	12,962	10,924	13,601	13,333	5,997	15,939	17,846	8,163	9,321	4,627
Total	14,825	13,420	15,953	14,851	7,491	37,757	49,664	43,523	38,083	25,641

[1] Cylinder and dial for making yard goods.
[2] Open-top cylinder for making yard goods.
[3] Includes both double cylinder and cylinder and dial machines.
[4] Includes warp and hand knitting machines.

Source: Bureau of the Census.

DOMESTIC PRODUCTION, SWEATERS

[Thousands of dozens]

Year	Men's	Boys	Women's, misses, and juniors	Girls, childrens, infants	Total
1970	3,220	688	5,251	1,472	10,631
1971	3,535	740	5,149	1,530	10,954
1972	3,792	750	6,464	1,460	12,466
1973	4,424	843	6,975	1,500	13,742
1974	4,624	695	6,309	1,545	13,173
1975	3,321	483	6,572	1,287	11,663
1976	3,046	417	6,133	1,082	10,673
1977 [1]	3,283	603	6,587	1,499	11,952
1978 [1]	3,327	606	5,887	1,071	10,891
1979 [2]	2,355	500	6,398	1,161	10,414

[1] Data for 1977 and 1978 is not directly comparable to prior years due to new additions to the census survey excluded from prior years.
[2] Estimated, based on monthly shipments of men's and women's, misses' and juniors' sweaters.

Source: U.S. Bureau of the Census.

IMPORTS FOR CONSUMPTION, SWEATERS—ALL FIBERS

	Quantity (thousands of dozens)			Value (thousands of dollars)		
	1979	1978	1977	1979	1978	1977
Man made:						
Men's and boys	1,314	2,433	1,707	59,948	103,302	68,925
Women's, girls, infants	6,642	7,032	7,415	248,648	285,776	277,728
Total	7,956	9,465	9,122	308,596	389,076	346,653
Wool:						
Men's and boys	527	676	576	54,313	65,578	51,276
Women's, girls, infants	1,129	1,221	1,931	90,895	104,530	131,194
Total	1,656	1,897	2,507	145,208	170,108	182,470
Cotton:						
Men's and boys	115	84	68	7,400	5,398	3,532
Women's, girls, infants	342	257	174	19,947	11,592	6,819
Total	457	341	242	27,347	16,990	10,351
All fibers:						
Men's and boys	1,956	3,193	2,351	121,661	174,278	123,733
Women's, girls, infants	8,113	8,510	9,520	359,490	401,898	415,741
Total	10,069	11,703	11,871	481,151	576,176	539,474

Source: U.S. Bureau of the Census.

Mr. JONES. Let me thank you for a fine statement that is to the point and addresses the issues. It is most helpful. Thank you very much.

Mr. VANIK. What did Commerce say about the limitation of width?

Mr. BODNER. That was no problem. It was a technical drafting problem and we absolutely agree with that.

Mr. FRENZEL. You accept all of the suggested changes?

Mr. BODNER. Yes, sir.

Mr. FRENZEL. Mr. Walsh, you may proceed.

STATEMENT OF JOHN B. WALSH, COUNSEL, SAMUEL STRAPPING SYSTEMS, LTD., MISSISSAUGA, ONTARIO, CANADA

Mr. WALSH. Thank you, Mr. Chairman. I will try to make this as brief as possible because we are all suffering the pangs of hunger.

Since the administration did not oppose the bill, I would like to thank them and maybe soften the statement that I submitted to you.

Mr. FRENZEL. We have been caught in that position often.

Mr. WALSH. I would like to submit the statement and then try to make a few remarks and close out, if I can.

Frankly, this was brought to my attention by my client but also the impact because I have been Legislative Counsellor for the city of Buffalo for about 8 years. I happen to represent an economically depressed area in the United States—Great Lakes, Buffalo and Cleveland, Detroit—all of these areas which border together with the industrial might of Canada could and should utilize their own facilities to help themselves in their own economic viability.

What came to my attention was that the U.S. Customs Service had decided that no longer could material steel products be shipped into the United States and a temporary importation under bond; that it should be done either on a drawback, which is a very costly and impractical situation in this area. Otherwise, the full duty should be charged. They should not use a temporary importation bond.

The Buffalo Port fought that. They thought the wastes were not valuable, and I did not think they were valuable because they become scrap metal. However, we have a point of disagreement on that with the customs department. We have felt that, for instance, the customs department thought in our case where we make steel bands that we choose to have them done so the material could not be segregated. We have to segregate this material. You can't substitute scrap. For instance, you can a part or a watch and send that back, but you can't substitute U.S. scrap for Canadian scrap. There is no way when the scrap is flying around the space to do it. You would have to close the plant down, put the stuff through at one plant and sweep it up, and they just sell it out for scrap, which is what it should be. Scrap, as you know, is duty free.

I couldn't believe this was the case but I have the letters here from the customs office, and some of my remarks that I would like to temper were some of the feelings of the people in the field. When we could not get agreement to interpretation had to do with their language. I would think that possibly the language could be changed to just say exported or destroyed or duties tendered upon such waste for duties for such wastes in effect at the time of importation so we would not go down the tortuous road of administrative review until we got to what your honorable body decided when you wrote this statute.

Finally, the last shocker was when our people were hit with a $27,000 fine, which is twice the value they lost to the United States, and finally was reduced to $18,000, and the total amount of twice the duty of the scrap remaining in the United States was $136 over a 5-year period.

Now, that was not just in Buffalo at Gibraltar Steel and Samuel Strapping. Bethlehem has had the same problem with Steelco and it has cost them a lot of money. Their crucible steel had a $1 million fine levied against them for using this. A fine of this type is given usually only when there is high culpability. How can they have high culpability when Chicago until just about a year treated it as scrap,

as waste. You are not manufacturing the waste. In the Cleveland Plain Dealer I am told they mention there is shortage of scrap steel.

Italo Dino is another company where they lost a contract with a Canadian concern of great value to them, but it cost the interpretation of customs of this law which was such that it cost them the contract. Instead of shipping it from Hamilton to Cleveland, they shipped it from Hamilton to England, and it is cheaper than going through our customs situation.

General Motors, I have found out, and Ford had the same problem up in Detroit.

Now, none of this does anything except destroy jobs, taking away jobs from people in the steel industry. None of it does anything to impair or impact upon other companies that want to do work in the United States. As a matter of fact, it impairs and destroys contracts and the contractual opportunities for certain businesses to do business in the United States.

The field office bet that Washington perhaps did not understand the interreaction of a border problem, and that is where we go into some drawback situations. If you are going to get down to what you fellows decided this law should be, we should either go through exhausting all administrative remedies through the courts or come here and ask you to state plainly that that should be duty-free.

Mr. JONES. Mr. Walsh, you have been very convincing, and I think you have my vote, but it is 1 minute to 5, and in 1 minute I am going to recess.

Mr. WALSH. Somebody asked why drawback wasn't feasible. One is you have to put the money up front for duty, which can be millions of dollars, and it is 3 years before you get that money back. In my case, it would have been $13,000 or so less 1 percent. Plus, you can't substitute. In a drawback situation, you can substitute parts but in scrap metal, you can't. It is flying around. I don't know. You can't destroy it, and you don't know whether it is U.S. steel, and it is not the end product. If it was something you were putting into the product, yes. If you were building something together, you might put the things in and you could substitute on that basis, but I thank you for your vote, and before I lose it, I think I will do what the old English barrister did. The young English barrister was arguing the case to the court and the old English barrister got a little annoyed and wrote a note to him. The young barrister opened the note and it read: "Shut up. The old bastard is with you."

He kept on arguing anyway, and the judge said, "Counsel, did you just receive a note?"

The young barrister said, "Yes, my Lord, I did."

"May I see it?" asked his lordship.

The barrister said, "It is a little personal."

The judge said, "May I see it?"

"Yes, my lord."

The judge read it, then asked of counsel, "Did you read this note?"

He said, "I did, my lord."

He said, "Then would you read it again?"

Mr. Jones, I have read what you said before. I read it again, and unless there are any questions from the committee, I will——

Mr. FRENZEL. We certainly don't want to upset your vote.

[A letter subsequently received and the prepared statement follow:]

JAECKLE, FLEISCHMAN & MUGEL,
ATTORNEYS AT LAW,
Buffalo, N.Y., May 12, 1980.

Chairman CHARLES A. VANIK AND MEMBERS OF THE SUBCOMMITTEE ON TRADE,
Committee on Ways and Means,
U.S. House of Representatives,
Washington, D.C.

GENTLEMEN: I wish to thank you again for giving me the opportunity to appear before you with reference to proposed bill HR 7167, introduced by Messrs. Nowak and LaFalce to amend the Tariff Schedule of the United States to permit entry of certain valuable wastes resulting from the processing of merchandise admitted into the United States under bond.

If you will recall, I was the last person on a very long agenda. I did not wish to hold the Committee up, and so condensed by remarks considerably.

Hence, there are two further matters which I would like you to take into consideration for inclusion in the record. One I touched on briefly; the other I did not mention at all.

First, for the sake of clarity, I believe that the proposed amendment would be clearer if it were changed from:

"However, where valuable wastes are generated during the manufacturing process, where either the segregation or exportation or both of such wastes are or would be economically unfeasible, duties shall be tendered on such wastes at rates of duties in effect for such wastes at the time of importation."

"All articles and valuable wastes resulting from such processing will be exported, destroyed under Custom supervision, or duties tendered on such wastes at rates of duties in effect for such wastes at the time of importation, within the bond."

This would replace the language now used. The trouble with the language of the bill as introduced, which I should have pointed out in my memo to you, is that it still requires some judgment on the part of Customs as to whether something is or is not economically unfeasible, and this can lead to a clash of opinions between Customs, the importers and the exporters. Rather than going through another tortuous journey of administrative legal procedures, I would think that the language I have proposed here would express what we all hope to achieve by the bill, clarifying it so that differing opinions as to interpretation will not arise in the future.

The other point, on which I did not touch, is that I would appreciate the Committee's including in this bill the normal clause giving retroactive effect; that is, that within 90 days of the effective date of the law, entries could be liquidated or reliquidated in accordance with the provisions of this law, or some other retrospective language.

I originally requested that this retroactive effect be incorporated in the bill. However, the sponsors of the bill were told by Customs that this was not the practice, as it would reward only those who had used this method of entry. At least, that is the impression that both Congressman Nowak and Congressman LaFalce conveyed to me.

The fact is, that the principle of retroactivity appears in almost every technical amendments bill. There is retroactivity given to duties in private bills dating into the early 19th century. Thus, it is not an uncommon thing.

Moreover, there is great justification in this situation, because the fines and levies imposed upon importers using the transportation in bond method to bring steel into the United States for processing (which was the common custom) is so huge that it is totally inequitable. I believe that the Congress never intended that the bill should preclude American Labor from obtaining jobs or American firms from obtaining contracts; nor did it intend that they should be fined and not mitigated at least in this situation. I believe that the retroactive effect of such a clause would make many companies whole and would be very instrumental in restoring business to the United States.

Again, I do not know that the Administration will wholly accept my last retroactive proposal, but I believe that, in equity, it should be incorporated.

I would much appreciate it if the remarks herein could be included in the record.

With great thanks to you for your patience, kindness, consideration and cooperation, I remain,

Very truly yours,

JOHN B. WALSH.

STATEMENT OF JOHN B. WALSH, COUNSEL, SAMUEL STRAPPING SYSTEMS, LTD., MISSISSAUGA, ONTARIO, CANADA

THE STATUTE TO BE AMENDED IN ITS PRESENT FORM

Subpart C of part V of schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) reads:

"1. (a) The articles described in the provisions of this subpart, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the additional 1 year, shall not exceed a total of 3 years, except that (1) articles imported under item 864.75 shall be admitted under bond for their exportation within 6 months from the date of importation and such 6-months period shall not be extended, and (2) in the case of professional equipment and tools of trade admitted into the United States under item 864.50 which have been seized (other than by seizure made at the suit of private persons), the requirement of reexportation shall be suspended for the duration of seizure. For purposes of this headnote, an aircraft engine or propeller, or any part or accessory of either, imported under item 864.05, which is removed physically from the United States as part of an aircraft departing from the United States in international traffic shall be treated as exported.

"(b) For articles admitted into the United States under item 864.50, entry shall be made by the non-resident importing the articles or by an organization represented by the nonresident which is established under the laws of a foreign country or has its principal place of business in a foreign country.

"2. Merchandise may be admitted into the United States under item 864.05 only on condition that—

"(a) such merchandise will not be processed into an article manufactured or produced in the United States if such article is—

"(i) alcohol, distilled spirits, wine, beer or any dilution or mixture of any or all of the foregoing;

"(ii) a perfume or other commodity containing ethyl alcohol (whether or not such alcohol is denatured); or

"(iii) a product of wheat; and

"(b) if any processing of such merchandise results in an article (other than an article described in (a) of this headnote) manufactured or produced in the United States—

"(i) a complete accounting will be made to the Customs Service for all articles, wastes, and irrecoverable losses resulting from such processing, and

"(ii) all articles and valuable wastes resulting from such processing will be exported or destroyed under customs supervision within the bonded period."

The amendment proposed by HR 7167 would change headnote 2(b)(ii) of subpart C above to read as follows:

"(iii) All articles and valuable waste resulting from such processing will be exported or destroyed under customs supervision within the bond period; however, where valuable wastes are generated during the manufacturing process and where either the segregation or exportation, or both, of such wastes are or would be economically unfeasible, duties shall be tendered on such wastes at rates of duties in effect for such wastes at the time of importation."

Item 864.05: Articles to be repaired, altered, or processed, (including processes which result in articles manufactured or produced in the United States). Free, under bond, as prescribed in headnote 1.

ARGUMENT

This amendment to the law would clarify the Transportation in Bond statute of the Tariff Schedule of the United States.

It would make it easier to encourage companies in other lands to have their

products processed, altered or remanufactured in the United States. This would give more work for U.S. citizens and more contracts for U.S. firms. This is particularly true of the steel industry along the border between the United States and Canada.

The border area covered by the Ports of Ogdensburg, Buffalo, Detroit and Chicago includes some of the heaviest industrial complexes in each nation.

In the field of steel in the United States, for instance, Buffalo was once the third largest steel producing center in the world. As a result, many ancillary steel businesses for processing, storage, etc., sprang up in this area, employing many people. The capital investment in these plants was great.

In Canada, Stelco, in Hamilton, became the largest producer of Canadian steel but since the processing facilities in Canada are not always as good as in the United States, Canadian purchasers of this steel have in the past shipped it to Buffalo, where it could be processed and returned more quickly, and at less cost, than in Canada. In some cases, the reverse was true, but this inter-country industrialization can and does help each nation through working together to further mutual employment and commerce. The less costly and complicated this facility for interaction in trade and commerce, the better for the promotion and fluorishing of business which is vital to the interests of the economically depressed areas of the Great Lakes region and to the overall interest of the United States.

For years the Ports along the Great Lakes were permitting steel to be processed under a T.I.B. (Temporary Importation in Bond). This is a simple procedure. The Customs had only to weigh the material coming in and that going out to know that only wastes were left behind.

No duty was paid. The scrap left over was unusable, or used as scrap metal, and did not in any way deprive United States companies or labor of markets for their goods and services in the United States. In fact, it had a positive effect on employment and business.

About 1974, the Washington Customs office informed the Great Lakes Districts that they should treat such metal scrap as "valuable wastes" and either have them destroyed under Customs supervision or exported. If this were not done, the user of a T.I.B. should be fined for making such an entry.

The Buffalo Office responded that it did not believe the wastes could be destroyed, nor were they valuable, because the cost of segregating such wastes from the U.S. wastes and transporting it back to the country of origin would be far greater than any "value" the scrap metal might have. The Washington Office replied that the importer chose to have its work done in a manner which prevented segregation, and therefore must bear the consequences.

The Washington Office did not deny that, if the cost of transport were greater than the value of the waste, the waste would then be valueless.

Their rulings overlooked the fact that no one "chose" to process the Canadian steel in such a way that it could not be distinguished from the U.S. steel wastes. All material was processed together, U.S. and Canadian alike: were it done otherwise, the plant would have had to be closed down to process the Canadian steel by itself, and the cost of doing this would have been monumental.

Nor did the Customs Office deny that the cost of transport discriminated against those cities closer to the border.

The Buffalo Office acquiesced in the following manner: it permitted the temporary importation in bond to continue, but levied a fine of twice the duty of the wastes remaining.

In a case I have now before the Custom Service, this would have amounted to about $136.00 for a 5-year's shipments of about $147,000 worth of steel, with an entry duty of only about $13,000.

The Chicago Office resisted the Customs ruling on the ground that the waste was scrap metal, and scrap metal is duty-free.

Washington countered the Chicago Office's position by stating that under the law the duty should be levied upon the item in the form in which it enters the United States; not on what it becomes after entry. Therefore, the scrap would be subject to duty as steel. Finally Chicago capitulated. (This bill would reaffirm Chicago's position.)

The Washington Customs Office suggested that a drawback entry (19 U.S.C. 1313) was the proper method to be used in the above situation. Under a drawback entry, the importer sends its products to the United States for assembly or processing, and after the work is completed, the product is returned to the country of origin. However, the importer (the foreign country) enters into certain agreements with Customs before the drawback is put into operation; the processor also enters into certain agreements, and further, must keep elaborate accounting records for examination by Customs.

The importer must pay full duty upon the articles entered at the time of entry. When the goods are returned to the country of origin, the U.S. Customs, within a 3-year period, returns all of the duty paid by the importer, less 1 percent of such duty for administrative expense, and less duty on articles not returned to such country.

Under "drawback", substitution permitted. This means, for example, that if the parts for a watch are sent to the United States for assembly, and certain U.S. items are substituted for the Swiss parts in the finished product, the U.S. parts would be considered Swiss parts for duty purposes.

Drawback is impractical in steel processing for the following reasons:

1. Duty must be paid at the time of entry, and the cost of money over a three-year period is prohibitive.

2. Drawback applies to assembly, not processing, so there could be substitution of scrap since it is not part of the end product.

3. The accounting burden on the processor, importer and Customs is too expensive to be practical.

4. The fundamental difference is that the Washington Customs Office, either because of Congress or its own thinking, does not understand or make allowance for the difference of commerce between the border Ports and the overseas Ports. Field people believe firmly that there is a difference, and it should be recognized, in order to stimulate trade and the practical problems engendered by the border relationship.

The Washington Customs Office is not aware (or appears not to be aware) of this problem.

The last straw occurred when the Washington Office decided that the Buffalo Office (and I presume, the other Ports as well) was treating this matter too lightly, and ignored the local Office's recommendation on fines and penalties. These were raised to unreasonable levels. (In the case I am presently handling, the District Director recommended a fine of about $130 to $200. The ultimate determination by Washington was a fine of over $18,000. I am informed that there were other instances where the fines ran as high as $400,000.)

Normally, fines are levied according to the degree of culpability. Here, even though the custom of the Ports and the professionals' opinions have differed, the importer is being penalized with a maximum penalty for violating the law with a high degree of culpability. If the professionals cannot agree on the basic premise, how can he be knowingly culpable?

These rulings have driven profitable business away from the United States. (In one case I have noted, business is being sent from Hamilton, Ontario, to England, because it is now cheaper than sending it to the United States.)

While I think that the Customs Office in Washington is in error, if we acceded to their rationale, this bill would, I hope, change the picture and help our commerce greatly. Incidentally, I did not recommend this language myself; it was done in concert with the Legal Officer of the Buffalo Customs Office, who feels that what has occurred is wrong and should be changed.

I am not wedded to the language of this bill. It may be that there is still too much discretion as to what is or is not feasible. However, I believe that this situation should be corrected.

I have been in touch with people here, in Cleveland, and in Detroit, where business and labor, including the steelworkers' union and the UAW should be vitally concerned that this issue should be resolved in the direction I have indicated here.

I speak not for my client, or for Buffalo alone, but for all the people of the Great Lakes Region.

Because of the shortness of time allowed for submission of a statement to this Committee, I am appending briefs which I have prepared in my particular case, which will give you a more in-depth statement of my position on the law as I see it, and the problems of one small importer, as they are.

JAECKLE, FLEISCHMANN & MUGEL,
Buffalo, N.Y., July 12, 1977.

Hon. JOHN F. CHILTON,
District Director of Customs, Federal Building, Buffalo, N.Y.

DEAR MR. CHILTON: Please be advised that we represent Samuel Strapping Systems, Ltd., 2360 Dixie Road, Mississauga, Ontario, Canada. On June 2, 1977, they received notice from you dated May 31, 1977 stating that demand was made for payment of $27,237.27 representing liquidated damages assessed against

them for violation of law or regulation of their breach of bond in that the United States Government alleged that our client did not re-export the valuable scrap residual of further processing of steel entered into the United States under the provisions of a temporary importation bond and that this valuable scrap was deducted by the U.S. Processor, Gibraltar Steel from our client's final billing.

In your documents sent to our client, you show that the amount of goods entered into the United States were valued at $140,707, that the actual duty was $13,151.25, and the loss of revenue was $27,237.27. We appear on behalf of our client to contest vigorously this claim, object to the above action, and state there are mitigating circumstances which should be considered by you. The reasons for our position are hereinafter set forth:

1. We deny that this is valuable "scrap" or valuable waste.

A. Steel or metal scrap or waste is duty free pursuant to Tariff Section 911.12, therefore, there could not be any valuable or dutiable waste, and we do not believe that we can read Tariff Schedule 864.05 without reading together with it Tariff Schedule 911.12.

2. The amount of the value of the scrap has been determined by your people by utilizing the figures of Gibraltar Steel which merely counts for the difference in the weight of the steel entered and the weight of the steel returned. This figure when applied to the cost of transporting the scrap to Canada would indicate that it is valuable under your interpretation because the cost of returning it would be less than the cost of the scrap. Your reasoning, however, we believe, is incorrect since this presupposes that there has been figured into this cost, the cost of segregating the scrap or residual material from other material. If such costs were added in the value it would be zero or minus because all of this material is run together with other material furnished to or by Gibraltar Steel and there is no way in which this can be segregated in any simplified manner. It would require separate runs which would require a tremendous amount of funds or separate individuals to grab the waste which occurs from the side trim line break, the clipped ends and the samples taken every 30 minutes of the waste for testing paint, tinsel, and elongation characteristics. The cost of placing some person there would far outweigh the cost of any value of the scrap.

3. It has not been denied that if this material was shipped to some place where the cost of transporting it was greater than the value of the material it would be considered valueless scrap. Yet the material would not be shipped to some other place because the cost of such shipment to any place which could process it would far outweigh the advantage of the Canadian firm of sending it from Canada to Buffalo in the first instance.

4. If all of the material sent to the United States for processing was dutiable by the United States then it would only follow that the re-exported material would be viewed or should be viewed by Canada as an American product and dutiable by Canada. This again would place the cost out-of-sight. One cannot help then but turn to Title 19, Section 1312 and 1313 of the U.S. Code. It seems to cover this situation which should be read in conjunction with the Tariff Schedules. Under the one section there would be no duty and under the other section, the drawback section, the only duty would be one percent of the re-exported material plus the duty of the material left in the United States. Since that is waste and duty free it would be nothing.

We think that whoever made this ruling did so without taking into consideration (aside from headnote 1 of Tariff Schedule 864.50) Tariff Schedule 911.12 and Sections 1312 and 1313 of Title 19 of the U.S. Code. We think if they took that into consideration they would find that the interpretation they have given to it is not logical nor does it stand the test of reading the law as an entirety rather than reading a single section without its relationship to the other provisions of law. That is what makes it so out of step with the other provisions.

5. We believe that the various sections we have quoted and our thinking of this, are in line with the expressed intent of the Executive Department and its various orders and expressions of opinion and the opinion of Congress to alleviate the unemployment situation in fiscally depressed areas and to attempt to help them in their economic battle for survival. Congress has through a series of laws presently before it expressly directed its attention toward the depressed areas and the maintenance, attraction of industry, and the development of jobs there. The Executive has done the same. By reading the statute in total and permitting this

work to be done in Buffalo without custom problem the economically depressed area of Buffalo could be greatly alleviated and we coud continue our work with Canadian firms that could use the various factories and services that we have to offer to them (steel is one of the important areas since we have been such a large steel producing town we have many types of steel processing mills readily available). To close off the border to this activity and to not permit these goods to be imported under a Transportation Importation Bond flies in the face of all this. The Department should permit the goods to come in under a Transportation Importation Bond and declare this scrap of no value since in fact it is (A) Not valunable, and (B) Not dutiable as waste or scrap because if they do not, we think, it will hurt Buffalo, hurt the job market, hurt our production facilities and further increase Buffalo's problem in attaining more jobs and a better business climate according to the expressed intention of Congress and of the Executive of our Country.

Moreover, we think that such a ruling is discriminatory to Buffalo and in violation of the Equal Protection Clause and the Civil Rights Act, section 1983 of Title 42 of the U.S. Code, because it discriminates against Buffalo merely because of its proximity to the Canadian border so that it cannot take advantage of its position to attract industry from Canada where some other more remote city might.

The problem is that no other city or very few exist where it would be fiscally economical for these plants to ship goods for processing, therefore, we may be precluding the entire United States from such economic benefits. We do not think the benefits for employment and for business opportunities should be shunted aside. We think that this is a particularly harsh rule for Buffalo and for the State of New York and is a rule which is bound to act as a means of decreasing our employment rather than increasing it and decreasing business opportunities instead of expanding them.

Another point should be noted, and that is that when the goods are shipped into the United States there is no way in which our client can foresee what amount of waste might be extracted in the processing of that steel. Therefore, it could not declare that amount. Certainly it has been the custom here for many years to use a Temporary Importation Bond for such processing work and the only other route available would be the drawback provision and that requires the payment of duty on the imported goods and then a return of that duty on the exporting of the goods less 1%, less the duty on the goods remaining in the United States which in this case is zero.

The red tape, the payment of the monies and then the attempt to get it back could really be detrimental to all small businesses from both a cash flow point of view and a cost factor in attempting to keep up with this by their office staff. We think that it just provides another unnecessary source of aggravation and cost to the small businessman which he should not have to go through.

The proper method is to use the Temporary Importation Bond since all parties concerned believe that the finished product will be returned to the company which is importing the material into the United States less whatever small scrap and this, as you know, only amounts to a maximum of 1.15 percent of the product imported into the United States. To stop the industry in the Buffalo area or to hurt it and to stop employment opportunities or to diminish them for this diminimus type of situation we think runs counter to logic, runs counter to the intention of Congress and the intention of the Executive and as we said is discriminatory to Buffalo, harmful to its economic position and harmful, therefore, to the State of New York and its ability to obtain and maintain viable, commercial activities.

As to law and regulations that are cited as being violated, I think we have dealt with them as to the reason why we believe that there is a different interpretation that should be given to them. Even under them it would appear that if these materials were entered under a Consumption Bond and then drawn back the total duty that we would be talking about would be 1 percent of the material brought back and zero duty on the remaining since it would be waste and at most we are talking about 110 percent of 1 percent. Moreover, since this was a custom and practice used before, and since it seemed the only really logical and economic way to handle the situation, and since it was a method of providing jobs and business opportunities for United States citizens and was done totally without any belief or attempt on the part of our client to in any way avoid its obligations to the United States Government, we respectfully ask that the ruling

in this matter be reversed and that our client not be required to pay the damages set forth in your notice of penalty or liquidated damages incurred and the demand for payment which was received by our client on June 2, 1977 and sent by you on May 31, 1977. This case is referred to as follows: 0901–06262, case no. 77–0901–50802, port name code, Buffalo, New York 0901, investigation file BU08BH515024.

Very truly yours,

JOHN B. WALSH.

JAECKLE, FLEISCHMANN & MUGEL,
Buffalo, N.Y., December 31, 1979.

Re District Case 77–0901–50802.

RICHARD E. PYNE,
Fines, Penalties & Forfeitures Officer, Department of the Treasury, U.S. Customs Service, Federal Building, Buffalo, N.Y.

DEAR MR. PYNE: Please be advised that I am in receipt of your letter of November 23, 1979, enclosing a copy of a letter which you received from Washington, D.C. in reply to my petition for relief claimed for liquidated damages in the amount of $27,237.20, filed on behalf of Samuel Strapping Systems, Ltd., Buffalo District Case No. 77–0901–50802, in which you advised me that according to the Washington review, the claim for liquidated damages would be cancelled upon payment of $18,091.00. You graciously sent to me a copy of the Headquarters Decision, DMF–4–02.11 R E M 609205 SG. Although your letter stated that supplemental action must be taken within 30 days from the date of this letter, I informed you that I was having difficulty obtaining the proper information concerning the duties imposed, and asked for a ten-day extension, which you graciously granted, to permit me to file a supplemental petition for relief.

Obviously we were disappointed that the Washington Office rejected our claim that the bond had not been violated because any wastes left behind here were scrap metal, which was duty-free under Section 911.12 of the Tariffs TSUSA, and the only way they could be made usable was by melting them down and remanufacturing them. This would also be exempt under the headnote of the same section.

Our petition for review is based on the following grounds:

POINT I

The Washington Office erred on the facts and law when it determined that the scrap metal produced by the processing of the Samuel Strapping systems steel coils was valuable waste within the meaning of TSUS 8, subpart 5c, of the tariff schedules

To understand the history of the previous practice of custom and use at the Buffalo and Chicago Ports, which was to use T.I.B.[1] in this situation rather than drawback, one has to understand the problem.

The Border area covered by the Ports of Ogdensburg, Buffalo, Chicago and Detroit include some of the heaviest industrial complexes in each nation.

In the field of steel in the U.S.A., for instance, Buffalo was once the third largest steel producing center in the world. As a result, many steel ancillary businesses sprang up in this area, processing, storage, etc., which employed many people. The capital investment in these plants is great.

In Canada, at Hamilton, Steelco became the largest producer of steel, but the processing facilities are not as good as in Buffalo, so that purchasers of steel can ship it to Buffalo, have it processed and returned faster, and at less cost, than in Canada. In some situations the reverse is true, but this inter-country industrialization can and does help each nation through working together to further mutual employment and commerce. The less costly and complicated this facility for interaction in trade and commerce, the better for the promotion and flourishing of business which is vital to the interests of the economically depressed areas of the Buffalo region, and to the overall interest of the United States as a whole.

In dealing with the law concerning this situation, it must be remembered that the best means of interpreting the meaning of any law is to read it in conjunction with the entire body of law in which it appears; to examine the

[1] Transportation In Bond.

actual situation as known, or presumably known, to the drafters of the legislation, both as it can be gleaned from the reading of the law, and from the common usage at the time the law was enacted; to consider the history of the law, the way it was understood and enforced by those administering it; and the way it was understood by those immediately dealing with it.

The framers of Schedule 8, part 5, subpart C, headnote 2(b) distinguished between wastes and "valuable" wastes, and stated that "valuable wastes" either had to be returned to the country of origin or destroyed under customs supervision. At the time herein in question they demanded that the identical foreign material be returned or destroyed; U.S. material could not be substituted.

The framers had to know that in the processing of steel there would, of necessity, be some waste; and since the waste was not destructible, and so could not be destroyed under supervision, and, in most cases, not identifiable as to country of origin, precluding its return to the owner, the question is: did they intend then that these wastes be treated as "valuable wastes"? The answer is clearly, "No". With the knowledge they had, they could not have provided for a T.I.B. situation in this section and subpart. A reading of section 911.12, giving a duty-free status to scrap or waste metal, has to be read in context with this section. Clearly, they did not consider the scrap as valuable for duty purposes.

This can also be gleaned from a reading of the headnote to 911.12 and of 19 CFR part 54 (probably the genesis of the legislators' thinking), both of which give a duty-free status to metals imported for melting purposes and remanufactured, which is the only way that steel scrap can acquire any value, and the only logical explanation of how the two sections could be enacted together.

The parties concerned herein (the importer, Samuel Strapping Systems, Ltd. and the processor, Gibraltar Steel) never treated the wastes as anything but scrap metal. The allowance given by Gibraltar was not based on the value of the steel as it entered the United States, but as scrap metal.

The logic of this position was so strong that the Ports of Buffalo and Chicago for years (including those years involved herein) treated shipments of steel for processing under a T.I.B. as proper, even though they had full knowledge of the amount of steel that came into the United States, that which left it, and the amount of waste remaining. Only after directions from Washington in 1975 did the Buffalo Port change its position, and the Port of Chicago made no changes until just recently. Thus, all the parties dealing with this matter—the Customs Service, importer, processor and customs broker—believed that the law did not consider the scrap metal generated by the manufacturing process to be "valuable" waste, which had to be processed in an impossibly segregated manner, to be sent back to the country of origin, or destroyed under Customs supervision, which again was impossible. They further believed that a T.I.B. was the proper way to enter and return these goods.

The Washington Office, in an attempt to claim that the waste was "valuable", cites various cases dealing with mineral rights and mining claims. In those cases, the Court, in dealing with whether a mining stake or claim is valuable, uses the test of whether the mineral deposit in a mine is sufficient to persuade a man of ordinary prudence to believe that its value justifies a further expenditure of labor and effort in the hope of developing the mine. Further, the Court used the test of whether there was a sufficient market for that mineral deposit to make it valuable.

These cases have nothing to do with the case in point. They are concerned with the working of a mine, a single phase of industry, and its possible future profitability.

In the instant case, we have a multi-faceted industry, which by its nature, in the production of its sales product, must use a process that generates a steel waste byproduct. Neither the importer not the processor is in the business of manufacturing scrap metal; the processor gathers it together and sells it to a junk man, to get it out of the way, and to get rid of it. Scrap is not the reason for the business of either company. It would not be a conceivable reason for a reasonable, prudent man to run such processing businesses.

Despite the Department's opinion, the processor cannot segregate for export, as we will show later, without enormous cost. And, as we will also show later, such segregation is not a matter of choice. The scrap cannot be made into steel or any other product as a segregated product except at enormous cost.

The cases cited by the Department are therefore inappropriate.

It has been stated by the Service that a drawback entry would be the perfect vehicle for that. This is a result of a misunderstanding of the history and use of the drawback situation and the nature of the subject matter involved.

A drawback entry requires various agreements and accounting procedures to be entered into between the parties and the Customs Service. It requires the importer (or exporter-transporter) to pay the full duty on the item imported and then, after the imported product is exported when Customs has completed its accounts, the duty paid is refunded, except for 1 percent paid on the full shipment and the duty on valuable articles left in the United States, not destroyed. Until recently, this required that the product exported must be the same foreign product imported, and not a U.S.-made substitute product. To do this, accounting records had to be kept of the segregation of the foreign products, and a verifiable identification made of the exported item.

Aside from the fact that it tied up a lot of money on the entry which was not refunded in some cases, for a year or more, the cost of supervision by the processor and Customs was very high.

Moreover, while it appeared that this type of entry worked in assembly-type manufacturing (watch parts, radio parts, etc.), it soon became apparent that it was impossible or terribly expensive and time-consuming for this type of entry to be used to cross the border for processing, and then have the finished product returned to the country of origin.

For example, in the instant case, the product is brought into this country for a processing-manufacturing treatment which is impossible to do and yet conform with the above T.I.B. requirements.

Gibraltar Steel processes the Canadian steel and American steel simultaneously on three machines in three separate operations in three separate buildings. As the processing progresses, it is impossible to tell which waste came from which steel and to segregate it by source. The option of shutting down the plant to process only Canadian steel is not viable, and the cost would be astronomical.

A simple look at the chart of duty collectible under a drawback situation would show that on the entries made here the cost to the government of monitoring this operation would far exceed the duty obtained; it would be ridiculously high. The inconvenience and cost would put an end to this type of work in the United States (as it has since this rule went into effect).

For many years, the type of entry (T.I.B.) for the type of processing we are dealing with here was accepted as the only rational way to deal with the situation, and it did not deprive the United States of revenue, but actually saved it costs.

Moreover, the dutiable value of the remaining waste was nothing. The material could not be segregated—the allowance was based on a weigh-in, weigh-out basis, which did not take into account material effectively pulverized, destroyed, or rendered unusable by contact with foreign matter. Nor did it take into consideration the difference of material placement on trucks, which could affect the weight.

All the steel except the small amount of scrap left over was returned to Canada. There is no disputing this fact, and Customs could easily monitor this, so that the T.I.B. was not being used to bring large amounts of valuable material into the United States without returning it, or a substantial portion of it, thus avoiding large duties on valuable products.

The system worked well for everyone, until this Port was directed in 1975 to change its procedure and insist on drawback entries and consumptive entries, and to levy penalties on those who had not used that type of entry. However, Chicago continued the original practice until this year.

The entries involved here start in 1971 and end in 1975. They were made during the period when the practice and custom of this Port was to permit T.I.B. entries on this type of operation—acting in good faith that the client, on the advice of his broker (who relied on the custom of the Port) entered the materials under a T.I.B. All of this was done with full Customs knowledge.

It is not unreasonable to conclude that, if a company were shipping its goods into this country expecting that some small part might remain and be sold or credited as scrap metal, that it would be sophisticated enough to check the custom and use of the Port, and find out whether or not the scrap were dutiable. If it found out that it were not, it could rationally conclude that the bond of Customs duties did not pertain to that material.

Not only is this a reasonable conclusion for a layman to arrive at, who is unversed in Customs law; it is a conclusion reached by the members of the service in various Ports. These men are sophisticated in Customs law, and their conclusion was a subject of dispute within the Service. To claim that the importer was intentionally or negligently culpable so as to warrant the imposition of such a huge fine instead of asking for the duty, or 110 percent of the duty on the scrap remaining, at its import value, seems very harsh.

POINT II

The Washington Office erred on the facts and law when it found that the rule of de minimis non curat lex does not apply to the case in point.

The amount of scrap generated in the manufacturing process amounts, on an average, to about 3.27 percent of the imported material, and since an allowance is given for the scrap metal at scrap metal prices, it has a market value of .38 percent of the total value of the imported goods, and 1.15 percent of the processing charges.

We have already sent you (and I am also attaching hereto) analogous situations in Tax rulings (marked Exhibit "A"), where the de minimis non curat lex rule is applied. You have rejected this, yet the Congressional Committees do not. For instance, in outlines of instructions for filing reports under the Federal Regulation of Lobbying Act on page 2, citing pages 15 and 16, note 35 of the House Select Committee on Lobbying Activities, the Select Committee on Lobbying Activities in its explanation of what expenditures are to be reported under the rule, states that the rule would not be applicable to a situation so inconsequential financially, and the Committee recites the de minimis rule and the cases upholding it, on pages 15, 16 and N32 of their report.

I am also attaching as exhibit "B" the letter of Mr. Sam Whitehead, of Samuel Strapping Systems, written to C. J. Tower in showing that this was the understanding of Samuel Strapping Systems.

Perhaps more importantly, a reading of the full Customs Law shows that the rule is used with respect to abandoned goods and other materials representing 5 percent or less of an entry, stating that these are matters which will not be pursued by the Service. Zinc and other products, particularly, mention the rule, and Am. Jur. 2d cites it generally as a 5-percent rule.

One should remember, too, that the amount of waste left, since it is figured on a "weigh-in, weigh-out" basis, does not take into consideration the fact that some of the material may have been pulverized, some is unusable because of contact with oil or other foreign materials. One should also consider the difference in loading the trucks, which could account for some of the weight loss.

To show how little the duty on the material left behind would have been under any circumstances, I am attaching Exhibit "C", which will demonstrate the small amount of duty involved. It would be absurd for two fiscally reputable firms to risk such a high penalty, given the small duty which could have been paid. Obviously, they thought they were acting properly and in accordance with the law.

The figures used in the attached chart are the figures sent to my client by the Service, and are not necessarily accurate; in fact, in a review of them with the Import Specialist, we could only guess at some. They are apparently not all under the same TSUS rate or surcharge. Further, the rates are at 8½ percent, 8 percent, 18 percent, 9½ percent and 7½ percent, on the various entries. The current duty on that TSUS cited would be 7½ percent, not 8½ percent, as stated on the work sheet. The Specialist told me that, since these were T.I.B. entries, not a great deal of effort was used in establishing the accuracy of the duty, so the penalties may have no relation to the correct duty.

On my part, I am using 3.27 percent of the entry as a constant as to scrap, though it may have varied slightly on the different entries. I am also using the .38 percent value as a constant, on the same theory. The amount involved is nevertheless so small that the doctrine of de minimis no curat lex should be applied.

POINT III

The Washington office erred on the facts and on the law when it stated that the purchase order had made allowance for the amount of scrap generated in the process before shipment and considered it valuable waste.

The fact is, as we have stated, that although estimates might have been given and the allowance for retained wastes agreed to before shipment, the amount could not be ascertained with any finality until reshipment on the "weigh-in, weigh-out" basis. Thus the allowance could not have been agreed to in advance of the return of the processed goods, nor could they have been considered "valuable" wastes. See Mr. Whitehead's letter, attached hereto as Exhibit "B".

POINT IV

The Washington Office erred on the facts and law when it asserted that it would be cheaper to segregate and return or to process the scrap metal into steel, and in holding that the parties chose not to segregate the scrap as the processing progressed, thus causing the high cost of exportation or destruction to be incurred as a matter of choice.

It would appear that the Washington Office borrowed Mr. Tebeau's comment in an earlier letter to your office, when it asserts that the parties "chose" not to segregate the scrap as the processing progressed, thus "causing the high cost of exportation or destruction to occur as a matter of choice".

I do not know in what context Mr. Tebeau used that phrase (i.e., what companies were involved, what products or what procedures), but it is certainly not true in the situation here. There is a total misunderstanding of the instant factual situation.

To "choose" means that one has a viable choice; that is, that there is some practical alternative method of processing the steel, so that one could fufill the requirement that the steel be separated (which requirement was a part of the law from 1971 to 1975), assuring that only the Canadian material would be returned to the Canadian market.

In the instant case, there was no viable choice. Gibraltar ran the material through one machine, American steel through two other machines, all at the same time in each of three separate buildings during three separate processes. Scrap was flying all over the place at four separate sites.

No one could determine which scrap was completely destroyed, which was rendered useless by coming in contact with foreign substances, which was Canadian, and which American.

The only way to have been sure of which was which would have been for Gibraltar to shut down its plant and run only the Canadian steel. The cost of this would have been prohibitive. It is analogous to a dairy having to process first Farmer Brown's milk, clean its pipes, Farmer Jones' milk, clean its pipes, Farmer Smith's milk, clean its pipes, etc. This would be so unfeasible economically, that no real choice is involved. If it were necessary to do this just to ship the wastes back to Canada, the cost of production would have to be included in the cost of transport, and would be hundreds or thousands of times the value of the scrap metal.

It must be remembered that at the point in time with which we are concerned, the identical product had to be destroyed or returned.

Thus, there could be no identification of the material for the purposes of sending the identical material back to the importer, or of processing it into steel, or of destroying it, which in any event was impossible in its segregated form.

As we previously stated, to take only the scrap generated here, and make only that into steel would cost an enormous sum on each entry, even if it could be segregated. It is a small amount of material; the cost of the furnaces, other machinery and additives, as well as labor, would be astronomical. Only by combining scrap metal with other scrap metal could the cost be kept feasible. This would not have been permitted by Washington's directives, so that the cost of segregating and returning or remanufacturing this small amount of segregated steel scrap would have far exceeded any value pertaining to the scrap itself.

POINT V

The Washington Office erred on the facts and on the law in stating that a viable alternative existed to the T.I.B. shipment, and in failing to recognize the custom and usage of this port up to 1975, and of the Chicago port until recently, which approved the practice.

Finally, it is suggested that a drawback entry or bonded entry, or foreign trade zones should, or could, have been utilized in this situation, rather than a T.I.B.

I believe that we have demonstrated that drawback entries in this situation are costly to the importer because of the amount of money he must invest in the entry duty, with no repayment until after a year or two has passed, of all the said duty money, except 1% of the full duty and the duty on the material remaining in the United States; it is costly to the processor in maintaining records accounting procedures; and it is costly to the Service in the processing of these entries, in comparison to the duties contemplated, as shown on the chart. Even if no substitution of articles need be made, and segregation totally enforced, it is still not economically practicable for anyone concerned.

As to foreign trade zones and bonded warehouses, some of these vehicles were not in existence here at the time of these entries. It becomes again more arduous in terms of accounting and auditing by the various groups than a T.I.B.; further, many processors would be discriminated against by reason of location or other factors. However, the basic objection is that the alternative methods are just not practicable, even if we were to concede that the waste scrap metal remaining in the United States after processing were "valuable waste" (which we do not).

Therefore, a T.I.B. seems to be the most logical way to proceed, and the rationale that it is lawful in this situation, we believe, makes this doubly true.

POINT VI

The Washington office erred on the facts and in setting the penalty at two-thirds of the claimed loss of revenue by failing to take into account the practice and custom of this port up to 1975, permitting such entries; the practice and ruling of the Chicago port, which permited such entries until recently; by failing to take into account the mitigating factors in 19 CFR 10.39(f) and 10.31(g), which indicate that, barring fraud, and where the bond has been substantially complied with, the duty charged should be upon the goods left in the United States and, as little as the duty charged, or 110 percent of such duty, upon such goods.

It also erred in that the amount of duty under any circumstances on goods left in the United States as waste is so small compared with the fine involved as to be totally unjustifiable.

It should be noted again that there is no dispute that all the material involved here returned to Canada except for a small amount of waste. Therefore, the Washington Office, in setting a penalty of $18,091.00, one-third of the "loss of revenue to the United States, as shown upon the attached schedule" (although this is admittedly an incorrect evaluation; or perhaps it felt barred by some statute of limitation from claiming the entire so-called "loss of revenue"), had to decide that my client had knowledge of the view of the Washington Office as to the meaning and intent of the statutes covering T.I.B. entries and intentionally attempted to violate the law and avoid duty payments, thus being highly culpable.

To believe this, Washington had to believe that my client was more knowledgeable in the Customs Law than the members of the Service themselves at the Ports of Buffalo and Chicago, and then the customs brokers, all of whom took a different view than that of Washington; it had to ignore the custom and usage of these Ports over the years; it had to ignore the Chicago Ports' belief that the wastes generated were valueless from a dutiable point of view and this same view was expressed at the Port of Buffalo.

It had to ignore 19 CFR 10.34(f) and other mitigating sections on levying duty only on goods remaining in the United States; it had to ignore the 5 percent de minimis rule; it had to believe that my client was avoiding a huge amount of duty (which the attached Exhibits show is not so); it had to ignore that my client used this method of operation for five years with full Customs knowledge before anyone complained and that my client would risk paying this huge fine instead of a small duty, if required; and it had to believe that my client knew and believed that the wastes were valuable, which, as can be seen by Mr. Whitehead's letter, was not so.

It seems incredible that these conclusions could be reached in light of the facts and the history involved. Everything points the other way: the custom and usage, the advice by two Customs Ports, which differs from the Washington viewpoint; the practical problems involved. In light of all this, the penalty, computed on a wrong figure, amounts to an unbelievable lack of understanding of the facts involved, and amounts to a severe injustice.

POINT VII

The ruling of the Washington Office is not in the best interest of the United States; rather it is harmful to this interest. Only a contra-ruling would be beneficial to the United States of America.

The interests of the United States are best served when its economic vitality can be encouraged, particularly in depressed areas. This ruling has inhibited many of these opportunities for United States employment in processing Canadian products, particularly in the economically depressed area of Buffalo.

Our nation's interest lies in the best interrelated use of the commercial and manufacturing facilities in our area, both locally and between the United States and Canada. To drive away our customers hurts us. To interpret laws correctly, so that they help our economy and thus help us: this is the interest which serves the United States best. This ruling is diametrically opposed to such action.

CONCLUSION

The Washington Office's Determination that Samuel Strapping Systems, Ltd. should pay liquidated damages of $18,091.00 in this case should be reversed. Scrap metal produced by the process described herein should be treated as valueless from a duty point of view. A.T.I.B. should be permitted to be used in cases such as this, to avoid the burdens of other procedures and encourage trade and work for our area. At the very least, the penalty should be no more than 110% of the duty on material remaining in the United States.

Dated: Buffalo, New York, December 31, 1979.

Yours, etc.,

JOHN B. WALSH,
Attorney for Samuel Strapping Systems, Ltd.

JANUARY 17, 1978.

Re CON-9-04-R:CD:D JE 208580

Mr. R. E. CHASEN,
Commissioner of Customs, Department of Treasury, U.S. Customs Service, Washington, D.C.

DEAR MR. CHASEN: Since you come from our area I know that you know the economic problems we are having here but can't you please take a step back and take a look at the illogic of the tariff situation as it exists for the purpose of importing products for processing here and returning the finished product to the country exporting the same less waste. When you write to the Congressmen and tell them that we are being paid for all this scrap it sounds like we are being paid a heck of a lot of money and you know that that is not true, enclosed is a statement which shows it is less than 38 percent of the value $130.50 and 1.15 percent of the processing charge. I think we should do things to encourage work for our people in the United States and not discourage them in writing and interpreting the law. I agree that the law as presently written and interpreted does not and an amendment to the proposed Customs Modernization Act could. This would help our economic problem here.

There is much precedent in federal tax law for using 15 percent as the line of demarcation denoting insubstantial or de minimis amounts. This, "substantially all of its adjusted net income" as used in Section 4942(j) of the Internal Revenue Code (concerning private foundations) has been defined to mean "85 percent or more" of the foundation's adjusted net income. Reg. Section 53.4942(b)-1(c). Likewise, "substantially all such stock" as used in Section 521(b) in specifying the requirements of a tax-exempt farmer's cooperative has been held to mean 1973-1 C.B. 295. The Internal Revenue Service has announced that the statutory test requiring that "substantially all of the activities" of a tax-exempt social club be for "pleasure, recreation, and other non-profitable purposes" is satisfied even where the club receives up to 35 percent of its gross receipts from sources outside their membership and up to 15 percent of its gross receipts from use of the club's facilities or services by the general public. Internal Revenue News Release I.R. 1731. Moreover, the Service has held that the requirement that "substantially all of the business of [a savings and loan association be] confined to making loans to members" was satisfied where as little as 80 percent of its business consisted of loans to members. Rev. Rul. 64-123. 1964-1 C.B. 521.

Granted that the language of the statute does not specifically differentiate between 'substantial" and "de minimis" waste—a court or ruling could.

Very truly yours,

JOHN B. WALSH.

P.S. Please don't think that I'm of the opinion that I know all the answers. I don't but it seems to me that we ought to be able to get togeher and write something that would be fair and profitable for American citizens and encourage industry in this area and that is all I am trying to do.

MISSISSAUGA, ONTARIO, *May 8, 1975.*

Re Canadian Steel to Gibraltar Steel, Buffalo for Processing and Return to Canada

Attention: Mr. A. Gaidys
C. J. TOWER & SONS INC.,
128 Dearborn Street, Buffalo, N.Y.

DEAR SIRS: Further to our recent conversation regarding these movements of material, I took SP9202, one of our more recent orders as an example to illustrate the various costs and relative value of scrap to the sale.

Total order—SP9292

Gross weight shipped—178,995 pounds.
Net weight returned—173,140 pounds.
Scrap 3.27 percent—5,855 pounds.
Value of raw material: 178,995 pounds @ 12.70 per 100 lbs.; $22,693.46—66 percent.
Cost to Gibralter processing: 173,140 pounds @ 6.55 per 100 lbs.; $11,340.67—33 percent.
Total value of finished material; $34,234.13—100 percent.

I think it can generally be agreed this scrap is *not* immediately or readily usable. It is collected at four points in the processing line and may be the result of:

a) Side Trim—approx. ¼" Wide generated when material slit to 11 widths of 1¼" wide=13¾" from original width of 14¼" then crushed into balls by balling machine.

b) Line Break—if strands break in heat treat may be painted or not, heat treated or not.

c) Clipped ends at pay off end of slitter and heat treat line.

d) Every 60 minutes samples taken of all widths for testing paint, tensile and elongation characteristics.

e) Because Gibraltar operation is continuous, it is extremely difficult to exactly identify scrap.

With a market value of $130.50 .38 percent of total value, or 1.15 percent of Gibraltar processing charges, can this be considered valuable scrap?

The intent of the act was probably to guard American business interests. I suggest application of duty or penalties would not be in the best American interest as Buffalo would lose profitable processing business on a product which is not sold into the United States.

Please present our views.

Thank you for your assistance.

Yours truly,

SAMUEL STRAPPING SYSTEMS LTD.,
SAM WHITEHEAD,
Manager, Research & Development.

EXHIBIT "C"—DUTY CHARTS

Attached hereto is an appraisal worksheet sent to my client, showing the duty due and the loss of revenue, and the bond penalty. The worksheet states that the number of the TSUSA is 608.84, and that the value is 8½ percent ad valorem.

The current TSUSA for 608.84 is 7½ percent, and although I have no knowledge of any change, it would appear that this was true from 1972 on. However, as much as I struggled to do so, it was impossible to arrive at any type of rational figures from the worksheet provided.

If you look at the attached appraisal worksheet, you will see that the ad valorem duty is in some cases 8½ percent, in some cases 18 percent, in some cases 8 percent, in some cases 7½ percent, in one case, 9.5 percent. Moreover, the actual duty due in one case would appear to be $373.68 at 8 percent duty; yet in loss of revenue, it would seem to be charged at 18 percent. In another case, the bond penalty of $1,534.00 has apparently not been subtracted, but it does not appear that this was subtracted from the loss of revenue. There is no way of knowing whether the duties imposed were correct; a tabulation of the actual duty due does not jell with the loss of revenue column. Therefore, the best we can do is as follows:

In 1971, Samuel Strapping Systems imported into the United States steel valued at $36,318.00. The actual duty due could have been $4,991.71, as appears from the chart; or $5,459.13; or $3,925.13. Utilizing the $4,991.71 figure, we see that the amount of duty on the remaining scrap,[1] if the duty were levied at the time it was imported, would have been $163.23. If a drawback entry had been made, an additional $49.92 would have been applied, and the total duty would have been $213.15.

On the other hand, if the value of the scrap steel which Gibraltar gave as a credit to Samuel Strapping Systems were utilized for duty purposes, the duty would have been $18.97, and if a drawback entry had been used with this in 1971, the total duty would have been $68.89.

Both of these figures assume that you have not agreed that the scrap metal was free of duty; if it were free of duty, the duty due to the United States would have been zero.

In 1972, the value of steel entered into the United States for processing was $30,567.00. Assuming that the duty levied upon entry was correct, the duty due at entry was $2,243.36. However, after exporting the processed material to Canada, the duty on the remaining scrap at import value would have been $73.36. If we add to that the 1 percent drawback fee of $22.44, the total amount exacted under the drawback entry would have been $95.79. If we took the value allowed by Gibraltar as a credit, the duty would have been $8.52, and with the drawback fee of $22.44, the total due would have been $30.96. This again assumes that you would not have allowed the scrap metal to be duty free, in which case no duty at all would have been paid to the United States.

In 1975, the value of steel imported was $73,922.00. From what we can gather, assuming the duty impositions from your list to be correct, the duty would have been either $5,220.49, $5,162.03 or $5,115.52. Since we have used the first figure in our computations, we will take that figure on the rest of the scrap left in the United States after exportation of the processed steel, and we find a duty of $170.71. Using the drawback entry fee of 1 percent, or $52.21, we would have a total drawback amount of $222.92.

If we valued the steel left in the United States at what it was credited for, the duty would have been $19.84, and the drawback charge would raise it by $52.21, making a total duty of $72.05. This again assumes that you are not admitting that scrap steel generated from the processing is duty free; if it were so assumed, there would be no duty on this entire lot.

We therefore run the range of possible duties using the drawback form from 1971 through 1975, from a maximum amount of $531.86 to a minimum of $171.90, or if, as we think, no duty is due, a figure of zero.

It is on this amount that you wish to extract from our client a penalty of $18,091.00. This seems somewhat incongruous, if not unconscionable. It would appear that you are trying to kill a mosquito with an H-Bomb.

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[1] Not returned to Canada.

APPRAISAL/WORKSHEET

[Violators: Samuel Strapping Systems Ltd., agent case No. BU08BH515024, district case No. 77-0901-50802, Appraisers name Robert Zolczer, TSUSA No. and rate 608.84—8½ percent]

Entry No.	Date of entry	Entered value	Appraised value (percent)	Duty paid	Actual duty due on full shipment	Loss of revenue		Bond penalty
						Actual	Potential	
003278	July 13, 1971	$2,785	8½		$236.73	$473.46		
003279	July 13, 1971	4,047	8½		344.00	688.00		
003333	July 16, 1971	4,520	8½		384.20	768.40		
003827	Sept. 22, 1971	4,497	18		809.46	1,618.92		
004653	Nov. 23, 1971	4,329	18		779.22	1,558.44		
004592	Nov. 18, 1971	2,945	18		530.10	1,060.20		
004651	Nov. 23, 1971	4,671	8		373.68	1,682.20		
900209	Feb. 15, 1972	5,167	8		413.36	826.72		
900219	Feb. 15, 1972	5,162	8		412.96	825.92		
900255	Feb. 22, 1972	5,027	8		402.16	804.32		
901633	July 21, 1972	4,773	8		381.84	763.68		
901711	Feb. 27, 1972	5,219	8		417.52	835.04		
901716	Aug. 1, 1972	5,219	8		417.52	835.04		
905305	Jan. 22, 1975	1,513	8½		128.61	257.22		
027740	Nov. 23, 1971	4,262	18		767.16	1,534.32		1,534.00
005259	Jan. 15, 1975	5,718	7½		428.85	857.70		
000262	Jan. 15, 1975	5,718	7½		428.85	857.70		
000255	Jan. 20, 1975	5,718	7½		428.85	857.70		
005296	Jan. 20, 1975	5,718	7½		428.85	857.70		
005378	Jan. 30, 1975	5,718	7½		428.85	857.70		
005391	Jan. 30, 1975	5,718	7½		428.85	857.70		
005424	Jan. 31, 1975	5,718	7½		428.85	857.70		
005447	Jan. 31, 1975	5,718	7½		428.85	857.70		
005563	Feb. 21, 1975	3,823	7½		286.73	573.46		
005802	Mar. 14, 1975	5,851	7½		438.83	877.66		
005816	Mar. 19, 1975	5,915	8		473.20	946.40		
005864	Mar. 21, 1975	5,779	8		462.32	924.64		
006005	Apr. 4, 1975	5,197	9½		493.72	987.44		
004650	Nov. 23, 1971	4,262	18		767.16	1,534.32		
Total		140,707			13,151.25	27,237.20		

Mr. JONES. Thank you very much.

Mr. VANIK. I want to say our hearings on miscellaneous tariff and trade preferences is hereby concluded. The hearing record will remain open for written statements and responses from the administration until the close of business on Friday, May 16.

I want to express my appreciation to my colleagues, Mr. Jones and Mr. Frenzel, for their diligence and patience this afternoon.

This subcommittee is hereby adjourned, subject to the call of the Chair.

[Whereupon, at 5:05 p.m., the hearing was adjourned.]

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APPENDIX

The following agency reports have been received by the subcommittee up to the time of publication. In addition, any written comments received on specific bills have been inserted following the reports. The material is arranged numerically by House bill number.

PROTOCOL TO CUSTOMS VALUATION CODE AND MISCELLANEOUS BILLS

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., April 23 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR CHAIRMAN VANIK: The AFL–CIO respectfully requests more extensive considerations on the impact of the many and varied issues raised before the Subcommittee on April 17, 1980. We share the concern you expressed at the hearing about potential employment effects of these changes in U.S. law. We believe that the potential trade and employment impact of most of the legislation which the Committee heard on April 17 would cost jobs and further weaken America's competitive strengh.

We, therefore, urge the Subcommittee to hold additional hearings or recommend that the full committee hold hearings on the employment implications of these issues. Because the issues are so varied, I have attached a brief statement of AFL–CIO concerns about bills which were heard by the Subcommittee on April 17.

Sincerely,

RAY DENISON,
Director, Department of Legislation.

Enclosure.

THE PROTOCOL ON CUSTOMS VALUATION

The United States has negotiated a protocol to amend the text of the customs valuation code, signed only last year at the conclusion of the Multilateral Trade Negotiations, in order to get four specific "less developed countries" (Argentina, Brazil, India and the Republic of Korea) to sign the valuation agreement. In the Protocol, the United States would agree to let an unspecified number of "developing" countries have more than the five years in the original code to meet the requirements of the code. It would also delete one of the tests in the code for proof of value by multinational firms or "related parties."

The term "developing countries" now includes many countries in varied stages of development and trade prowess. Brazil and the Republic of Korea, for example, are newly industrialized countries; India soon will be; and Argentina has special problems. To lump these countries, the OPEC countries and such poverty-striken nations as Bangladesh into a category called "developing countries" and assume that special rights should accrue to all of them ignores the realities of the 1980's. As it was agreed last year, the code gave all such countries the advantages given all countries and five years to comply. Since the United States lost its strength in consumer electronics in five years, this is a great benefit. We do not think it is appropriate to make even more concessions and give even more time to "developing" countries to come within the code just for the sake of saying that the international negotiation was improved.

Once Congress accepts this protocol, the U.S. will be committed to abide by it, regardless of the fact that nothing apparently has been gained for exporters, while imports will continue to be encouraged into the U.S.

We are concerned that several pages listing changes in rates of duties for "non-competitive chemicals" is attached to the protocol and was not publicly discussed in detail.

We urge that much more examination be given to this issue before it is accepted.

TRADE BILLS—H.R. 6894, H.R. 116, H.R. 4248, H.R. 5827, H.R. 6975, H.R. 7004, H.R. 5452

H.R. 6394, the Customs Court Act of 1980, requires far more attention than a cursory hearing by the Trade Subcommittee could provide. This bill brings about a major change in judicial review and procedure for all import cases. New jurisdiction is granted for the customs court, which would be renamed a Court of International Trade. Hearings on this subject have been held largely in terms of the issue of judicial machinery. But the Congress should be given specific examples of how specific cases are now handled in the courts and how the bill would change this. They should also have the opportunity to learn why the Customs Court—a court that currently evaluates import transactions—should be given authority over additional international trade cases. This new court would be a special court for imports. But trade is much more than import transactions.

We believe that the budgetary implications of this change need to be fully examined. When the concept was first suggested, the Customs Valuation Code had not been adopted and the Customs Court personnel were not expected to be overburdened. But a new Valuation Code for billions in imports should provide ample case work for that Court. To give it more cases will entail additional expense.

H.R. 116 and H.R. 4248, which amend Section 8e of the Agricultural Adjustment Act of 1933, we support the concept of equal treatment for imports. The laws of the United States should not be undermined by special privileges for imports. We believe that U.S. farm producers of winter vegetables and tropical fruits should be allowed to develop and improve U.S. competition in food production, so that the U.S. can be an efficient producer and exporter of farm products.

H.R. 5827, to amend the Foreign Trade Zones Act of 1934, the Congress should review the relevance of this dated law for foreign trade zones rather than merely changing the date for the annual report. We, therefore, oppose H.R. 5827.

H.R. 6975, to eliminate the duty on hardwood veneers, we join the United Brotherhood of Carpenters and Joiners to oppose the bill. The Committee has heard from the Carpenters union the reasons for such opposition, i.e. no information on benefits. Employment effects have not been adequately examined or proved by the proponents or the Administration. This unilateral change would give our trading partners a "free ride"—a tariff cut for nothing.

On H.R. 7004, to eliminate duties on some textile machinery, the same arguments could be made.

H.R. 5452, to permit products of U.S. origin to be reimported into the U.S. under informal customs' entry procedures, the stated purpose of the bill is excellent and would ordinarily receive our support. We recognize that U.S. exporters of products should be allowed to bring them back to the U.S. for repair or adding special devices without going through lengthy customs procedures. But we do not believe the language of the statute is specific enough to preclude the misuse of this bill for item 806.30 and item 807 cases. Therefore, we oppose H.R. 5452 until this is clarified.

U.S. COUNCIL FOR AN OPEN WORLD ECONOMY, INC.,
Alexandria, Va., April 17, 1980.

CHAIRMAN,
Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Our Council is here proposing a new approach in the handling of what heretofore (including bills which are the subject of current Subcommittee hearings) have been known as "temporary suspensions of duty."

Requests for such suspension are based on the declared needs of consuming domestic industries and on the contention that these duties are not needed by domestic producers of similar products. Suspension may be deemed essential to the ability of these domestic users to compete with foreign users of such materials in end-product competition in the United States or other markets.

Our Council proposes that, in deserving cases, these import duties be terminated, not just suspended—subject to the restoration of tariffs on these imports if, through proceedings in the International Trade Commission, the domestic industries producing similar products can establish that serious injury from import competition has occurred and that such tariffs are needed as temporary components of coherent adjustment strategies addressing the real problems and needs of these industries.

Such reform of the handling of "duty suspension" cases would contribute both to better trade policy and better use of Congressional time and resources.

The U.S. Council for an Open World Economy is a private, non-profit organization engaged in research and public education on the merits and problems of achieving an open international economic system in the overall public interest. The Council's only standard is what the Board of Trustees perceives to be the total national interest.

Sincerely yours,

DAVID J. STEINBERG, *President.*

STATEMENT OF JOHN A. CASEY, PRESIDENT, WORK GLOVE MANUFACTURERS ASSOCIATION

SUMMARY

The Work Glove Manufacturers Association is seriously concerned that the implementation of the Protocol to the Multilateral Trade Negotiations' Customs Valuation Agreement, the implementation of the Agreement, and the resultant tariff cuts on certain work gloves, will adversely affect work glove producers and workers in the United States.

MTN tariff cuts covered by the Customs Valuation Agreement include a 60 percent tariff reduction on work gloves of coated and partially coated fabrics and dipped supported gloves (TSUS item 705.86, "Other Gloves of Rubber or Plastic") from the current ad valorem rate of 35 percent to only 14 percent. This reduction is unacceptable and inconsistent with the import impact on this industry.

These gloves have been excluded from the Generalized System of Preferences (GSP) because of their import sensitivity, yet a 60 percent reduction was nevertheless offered during the MTN, although not yet proclamied by the President. Moreover, developing countries account for virtually all imports of these types of gloves—countries which made virtually no concessions in the recently-concluded trade negotiations and are not signatories of the Customs Valuation Agreement. It is our contention that only signatories of the code should be accorded the reduced tariffs dictated by the Agreement.

The U.S. work glove industry has sustained significant import injury in recent years, with import penetration in the U.S. work glove industry reaching 37 percent in 1979. Imports of coated and partially coated and dipped supported gloves under TSUS item 705.86 have increased substantially in recent years, at a tariff rate of 35 percent. This trend in increased imports is certain to accelerate as a result of a 60 percent tariff reduction, thereby aggravating the industry's already serious import problem.

Our members request that this subcommittee require, in the Protocol, that only those countries which sign the Agreement be granted proposed tariff reductions.

STATEMENT

I am John A. Casey, President of the Work Glove Manufacturers Association, a trade association whose members account for the great bulk of the domestic output of work gloves. I am also General Manager of the Granet Division, INCO Safety Products Company, a manufacturer of work gloves. The domestic work glove industry is concerned that the implementation of the Protocol to the Customs Valuation Agreement of the Multilateral Trade Negotiations and the implementation of the Agreement will aggravate the import injury suffered by the work glove industry.

A 60 percent tariff reduction on imports of work gloves of coated and partially coated fabrics and dipped supported work gloves, which enter under TSUS item 705.86, is included in the Customs Valuation Agreement. The manufacturers of work gloves strongly believe that, considering the import competition and resultant import injury experienced by this industry in recent years, this tariff reduction is excessive and is a threat to the viability of the domestic industry and the jobs of our workers. The current duty of 35 percent ad valorem on imports of these gloves should not be reduced. Yet, if the reduction occurs, it is imperative—and only fair—that only signatories of the Customs Valuation Agreement be accorded the benefits of tariff reduction. The major supplying countries of dipped suported and coated work gloves are not parties to the Customs Valuation Agreement and, therefore, should not benefit by any duty cuts.

The U.S. Work Glove Industry

Firms in the work glove industry are mostly small to medium size establishments. These firms are largely scattered throughout the southern, northeastern, and north central regions of the United States. Production is fairly labor intensive, with salary and wages accounting for almost 40 percent of the value of industry shipments.

The work glove industry has, on two separate occasions, sought import relief under the provisions of the Trade Act of 1974 and been denied by the U.S. International Trade Commission. In 1975, a petition filed under the "escape clause" (section 201) provision of the Trade Act covering all work gloves was rejected by the ITC. In December 1977, the industry again petitioned the ITC under Section 406 claiming disruption of the cotton work glove market as a result of increased imports from the People's Republic of China. That petition was denied as well.

Despite the negative ITC decisions, it is clear that the work glove industry has felt the impact of increasing imports in the last 5 years. Although cotton work gloves are covered under the Multifiber Arrangement (MFA), other gloves do not benefit from any restraints on imports. Imports of all work gloves have increased absolutely and relative to domestic shipments and apparent consumption from 1975 through 1979.

Employment in the glove industry, according to Census data, increased from 14,800 workers in 1975 to 16,400 in 1977, but remained significantly below the 1974 level of 19,300 workers. No more recent official data are available.

Imports of all work gloves more than doubled between 1975 and 1978, while import penetration increased from 23 to 33 percent. Imports increased by 21 percent in 1979, as import penetration continued to increase to an estimated record-high 37 percent.

No industry can long endure such high import penetration rates, and the work glove industry is no exception. If the Protocol to the Customs Valuation Agreement is implemented as is, and the triffs on certain work gloves are reduced as planned, the viability of this U.S. industry and the jobs of our workers will be further threatened.

Imports Of "Other Gloves Of Rubber Or Plastic," TSUS Item 705.86, Have Increased Substantially At a Tariff Rate of 35 Percent

Tariff item 705.86 covers imports of "other gloves of rubber of plastic" which includes dipped supported gloves and gloves of coated or partially coated fabrics. Such imports increased by 244 percent from 1975 to 1979, from 149 thousand dozen in 1975 to 513,000 dozen in 1979, as shown in Table 1 attached to my statement. During this period U.S. shipments of these gloves increased at a moderate rate, while the rapid increase in imports resulted in increasing import penetration into the U.S. market. This large increase in imports was accomplished at a tariff rate of 35 percent before any tariff reductions.

The sources of these glove imports are the developing countries. Virtually all U.S. imports come from developing countries, particularly Barbados, Hong Kong, Korea, Taiwan and the Philippines. Barbados is the largest single country supplier, accounting for 70 percent of the volume, and 66 percent of the value, of imports in 1979. Imports from Barbados have more than tripled in volume since 1974.

Such large increases in imported work gloves from these sources is directly related to the high degree of labor intensity of work glove production. Developing countries have the distinct advantage of a lower cost of production because

of exceedingly low wage levels, which allows imports to undersell U.S.-produced work gloves in the U.S. market.

The import sensitivity of dipped supported and coated or partially coated gloves is evident in their exclusion from the Generalized System of Preferences (GSP) which accords duty-free treatment to non-import sensitive products from developing countries. Thus, it was a shock when a tariff reduction of 60 percent, from 35 percent ad valorem to only 14 percent, was negotiated as a result of the MTN's.

What is particularly appalling about this duty cut is the fact that these developing countries, which are the major suppliers of other rubber of plastic gloves, made virtually no concessions in the recently concluded trade negotiations. Moreover, these countries are not signatories of the Customs Valuation Agreement.

While imports of these gloves have increased rapidly, the current 35 percent duty at least represents some form of deterrent to imports, which otherwise might have increased at even more rapid and injurious rates. Furthermore, the trend in increased imports is certain to accelerate as a result of the 60-percent tariff cut, thus threatening to further erode the U.S. work glove market. U.S. producers cannot afford any further threat to their already diminished market share.

Conclusion: Only those countries which have signed the Customs Valuation Agreement should be accorded its benefits

There appears to be no justification for the reduction in the tariff on dipped supported and coated gloves from the current ad valorem rate of 35 percent to only 14 percent, as negotiated. The U.S. work glove industry, as a whole, is clearly an import sensitive sector. Any further increases in imports of these gloves pose a threat to the industry and its workers. The import sensitivity of the product itself is evidenced by its exclusion from the Generalized System of Preference. Nonetheless, the 60-percent cut in the duty on TSUS item 705.86 has been offered as part of the MTN, although not yet proclaimed by the President.

The major sources of these imports are developing countries which have not signed the Customs Valuation Agreement. It is important that this subcommittee consider the negative effects of the implementation of the Protocol to the Customs Valuation Agreement and the resultant reduction in the tariff rates on certain work gloves. An amendment to the Protocol of the Customs Valuation Agreement must be made which requires that only those countries which have signed the Customs Valuation Agreement be accorded its benefits. Such an amendment is the only equitable solution.

TABLE 1.—U.S. GENERAL IMPORTS OF "OTHER GLOVES OF RUBBER OR PLASTIC," TSUS ITEM 705.86, BY COUNTRY, 1975-79

[In thousands]

	1975		1976		1977		1978		1979	
	Dozen	Amount	Dozen	Amount	Dozen	Amount	Dozen	Amount	Dozen	Amount
Barbados	16	$45	18	$55	115	$490	244	$1,514	357	$2,730
Hong Kong	8	50	45	246	63	242	83	416	73	430
Japan	4	37	1	4	(1)	5	2	7	1	3
Korea	(1)	(1)	7	57	12	114	76	107	16	41
Mexico	5	50	(1)	1	0	0	0	0	0	0
Philippines	36	454	19	240	29	379	13	182	16	238
Taiwan	34	215	35	281	38	379	47	339	20	217
Other	46	131	9	56	24	142	2	19	30	295
Total	149	982	134	940	281	1,751	467	2,584	513	3,594

[1] Included in other.

Source: U.S. Department of Commerce.

H.R. 116

To amend section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE BILL

The bill would, in effect, require the same product-shipping standards applied to imported tomatoes as are applied to Florida-grown tomatoes which are subject to the provisions of U.S. Department of Agriculture Marketing Order No. 966. With respect to Florida-grown tomatoes, fresh tomatoes of different grades and sizes may not be commingled in the same shipping container except for large or larger sizes. Although imported tomatoes are now subject to inspection and are required to meet minimum standards for size and grade, different sizes and grades are allowed in the same shipping container.

BACKGROUND INFORMATION

Section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608e—1) provides that, whenever a marketing order issued by the U.S. Department of Agriculture contains any terms or conditions regulating the grade, size, quality, or maturity of fresh tomatoes produced in the United States, imports of such tomatoes shall be prohibited unless they comply with the grade. size, quality, and maturity provisions of such order. Marketing Order No. 966 (7 CFR 966) provides shipping standards for tomatoes grown in certain areas of Florida.

Under U.S. Department of Agriculture regulations (7 CFR 980.212), it is provided that, during the October–June growing period in Florida, whenever tomatoes grown in Florida are regulated under Marketing Order No. 966, imported tomatoes shall comply with the grade, size, quality and maturing requirements imposed under that order.

The interpretation of the U.S. Department of Agriculture, however, has been that there is no requirement under the law and the marketing order that different sizes and grades of imported tomatoes cannot be commingled in the same container. The imported product in a container need only meet the minimum standards of the marketing order. The Department has stated that a requirement of noncommingling in an imported container would be a "pack specification," i.e., a packing requirement which goes beyond the quality-related factors provided by the marketing law.

Domestic interests have maintained for more than 20 years that imported tomatoes, if commingled as to grade and size, should be prohibited from importation under existing law and the existing marketing order. To overcome the effect of the negative U.S. Department of Agriculture ruling, legislation has been introduced in previous sessions of Congress, and a public hearing was held on H.R. 744 (identical bill to H.R. 116, 96th Congress) on October 4, 1977, before the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition of the Committee on Agriculture, House of Representatives, 95th Congress, 1st Session. See U.S. Government Printing Office Publication, serial No. 95–X.

The claim of importers of tomatoes from Mexico and of the Mexican tomato industry is that the imposition of the packing requirements of the Florida marketing order would be severely injurious, adding to the expense for handling tomatoes and possibly changing substantially the harvesting and marketing practices in Mexico. Presently, Mexican tomatoes are more mature when harvested than Florida tomatoes and are more susceptible to damage in handling. As a result, importers fear that the additional handling required for sizing purposes would lower the grade of Mexican tomatoes. On the other hand, it is the

claim of at least a part of the domestic industry that the uniform grade and size requirements in a container are necessary, for instance, to prevent deception and to insure uniformity in the marketed product in the United States.

The probable effect of this legislation on U.S. imports depends largely on the time period being analyzed. In the short run it is likely that less Mexican tomatoes would be imported into the United States; in the longer run the Mexican industry might shift to harvesting tomatoes in a mature green state and utilize ethylene to color the tomatoes as is done in most of Florida.

Another important question is the relationship of this bill to the legislation currently being considered by Congress and the administration for implementing the multilateral trade negotiations. In view of the fact that tomatoes harvested in California and parts of Florida are not subject to Marketing Order 966, there may be contentions that impositions of the packaging requirements to imported tomatoes would be contrary to U.S. obligations under the Agreement on Technical Barriers to Trade, assuming the United States adheres to the Agreement through the implementing legislation currently being considered.

DESCRIPTION AND USES

Several types and varieties of tomatoes are grown for consumption in the fresh state. They range in color from yellow to deep red and ordinarily fluctuate in size from 3 to 5 inches in diameter, although the cherry tomato, a distinct type, bears fruits that measure only about 1 inch in diameter when mature. (Cherry tomatoes are exempt from the requirements of Marketing Order No. 966.) Plant breeding efforts in recent years have been directed toward the development of varieties that have thick outside walls and uniform ripening characteristics and are thus well adapted to the long-distance shipping requirements and increasing mechanization of the tomato industry. Long supermarket shelf life is also an important consideration of plant breeders. U.S. imports of tomatoes are generally of types and varieties similar to those produced domestically. Many tomatoes termed "fresh" are actually sold in a chilled condition. Whole tomatoes are not marketed in a frozen state.

The most significant distinction regarding fresh tomatoes, according to the trade, is based upon maturity at harvest. Most commercially grown tomatoes are harvested at either the "mature-green" or "vine-ripe" (breaker) stages. A mature-green tomato is fully grown and has a green, waxy skin that has not yet begun to change color. A vine-ripe or breaker tomato has been allowed to remain on the vine up to 21 days longer than the mature-green, and, although at least 90 percent of the surface is still green, its skin has turned yellow or pink at the blossom end. Vine-ripe tomatoes finish ripening through natural processes, while mature-green tomatoes are ripened with the aid of commercial applications of ethylene gas, an organic compound that is present in the tomato itself in the natural ripening process on the vine.

Another classification based on maturity is the "firm-ripe" tomato. As this term implies, the outside surfaces of such tomatoes are mostly red or pink, but it is probably not quite at the stage of optimum ripeness. Tomatoes are picked at the firm-ripe stage when they are earmarked for nearby commercial markets, for at such an advanced stage of ripeness they could not withstand the bruising involved in long-distance shipping. Tomatoes obtained from such noncommercial sources as roadside stands and even home gardens are often picked in the firm-ripe stage.

In order to facilitate marketing, the U.S. Department of Agriculture (USDA) has established certain standards pertaining to sizing and grading. The size categories for tomatoes are as follows:

Category:	*Minimum diameter (inches)*
Extra small	$1\frac{23}{32}$
Small	$2\frac{1}{32}$
Medium	$2\frac{9}{32}$
Large	$2\frac{17}{32}$
Extra large	$2\frac{23}{32}$
Maximum large	$3\frac{15}{32}$

There are also four grade classifications—U.S. No. 1, U.S. Combination, U.S. No. 2, and U.S. No. 3. Imports are subject to all of these USDA specifications.

Tomatoes have been regulated since 1955 by U.S. Department of Agriculture Marketing Order No. 966. The marketing order was initiated by the Florida tomato industry to regulate the marketing and to increase the quality of Florida's tomato products. Current marketing order standards call for shipments of both domestic and imported tomatoes at least to be U.S. No. 3 grade and to measure 2$\frac{2}{32}$ inches in diameter (small). Normally, most tomatoes shipped subject to the order grade well above the minimum, with more than 50 percent of the Florida shipments and more than 80 percent of the imports from Mexico graded U.S. No. 1.

Fresh tomatoes are served principally in salads, alone or in combination with lettuce or other vegetables. Fresh tomatoes are also used as an ingredient in sandwiches, soups, sauces, and dressings. As a cooked vegetable, tomatoes are served stewed, fried, and baked.

TARIFF TREATMENT

The rates of duty provided for tomatoes, fresh, chilled, or frozen (but not reduced in size or otherwise prepared or preserved) are shown in the following tabulation.

TSUS item No.	Description	Rates of duty	
		Col. 1	Col. 2
	Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved):		
	Tomatoes:		
137.60	If entered during the period from March 1 to July 14, inclusive, or the period from September 1 to November 14, inclusive, in any year	2.1¢ per lb	3¢ per lb.
137.61	If products of Cuba	1.8¢ per lb (s)	(1).
137.62	If entered during the period from July 15 to August 31, in any year	1.5¢ per lb	3¢ per lb.
137.63	If entered during the period from November 15, in any year, to the last day of the following February, inclusive	1.5¢ per lb	3¢ per lb.
	If products of Cuba	1.2¢ per lb (s)	(1).

[1] The preferential rate of duty for Cuba has been suspended pursuant to sec. 401 of the Tariff Classification Act of 1962, but still is included in the tariff schedules.

The column 2 rates of duty are the rates which are applicable to the products of most Communist countries.

DOMESTIC PRODUCTION

During the crop years 1973–74 to 1977–78 (a crop year begins Nov. 15), U.S. commercial production of tomatoes for the fresh market rose irregularly from 1.5 billion to 2.2 billion pounds. The major growing season in the United States is in summer, followed by spring, fall, and winter. Florida was the principal producer of tomatoes for the fresh market. That State is the only domestic source of fresh tomatoes during the winter months and the most important domestic supplier in the spring. In 1976–77, Florida accounted for two-fifths of the U.S. output and in 1977–78 for somewhat more than one-third of the total. The second principal producing State for the fresh market is California, with the bulk of its output during the summer and fall months.

U.S. IMPORTS

During the crop years 1973–74 to 1977–78, U.S. imports of fresh tomatoes increased irregularly from 605 million to 824 million pounds. Virtually all of the imports come from Mexico. The bulk of the imports enter from November through the following May, a period when most of the Florida crop is marketed. Imports accounted for about 50-45 percent of the domestic market during this 7-month period in recent years.

Tomatoes imported from Mexico are most often vine-ripe or breaker tomatoes picked at a more mature stage than the Florida tomatoes subject to the marketing order). The imports ordinarily have not been handled by machinery in picking, grading, sizing, and packing, but have ordinarily been both handpicked and handpacked.

TABLE A.—TOMATOES, FRESH, CHILLED, OR FROZEN, BUT NOT REDUCED IN SIZE OR OTHERWISE PREPARED OR PRESERVED (FRESH, ALL SEASONS)

Period	Production	Exports	Imports	Apparent consumption	Ratio of imports to consumption (percent)
	Quantity (thousand pounds)				
Year beginning Nov. 15—					
1968	1,939,800	94,706	416,963	2,307,057	20
1969	1,766,000	87,181	635,482	2,314,301	28
1970	1,762,400	105,056	586,843	2,244,187	26
1971	1,941,200	132,553	581,012	2,389,659	24
1972	1,476,541	150,845	752,452	2,078,148	36
1973	1,526,914	156,426	604,976	1,975,464	31
1974	1,603,532	200,533	566,983	1,969,982	29
1975	1,709,871	205,816	632,273	2,136,328	30
1976	1,521,014	172,629	799,761	2,148,146	37
1977	2,193,300	207,638	824,304	2,809,966	29
	Value (thousands of dollars)				
1968	222,976	10,086	69,912	282,602	25
1969	201,683	8,974	94,059	286,768	33
1970	234,946	12,305	86,786	309,427	28
1971	288,844	17,008	87,383	359,219	24
1972	310,665	20,711	115,963	405,917	29
1973	340,329	23,341	65,238	382,226	17
1974	385,771	31,234	64,949	419,486	15
1975	410,381	31,399	69,248	448,230	15
1976	406,225	28,705	150,873	528,393	29
1977	436,831	32,303	161,999	566,527	29
	Average unit value (cents per pound)				
1968	11	11	15	----	----
1969	11	10	15	----	----
1970	13	12	15	----	----
1971	15	13	15	----	----
1972	21	14	15	----	----
1973	22	15	11	----	----
1974	24	16	11	----	----
1975	24	15	11	----	----
1976	27	17	19	----	----
1977	20	16	20	----	----

Note: Tables A and B do not agree owing to differences in periods covered.

Source: Production compiled from official statistics of the U.S. Department of Agriculture; imports and exports compiled from official statistics of the U.S. Department of Commerce.

POTENTIAL LOSS OF REVENUE AND COST TO GOVERNMENT

If imports of tomatoes were affected to the point that lesser quantities of tomatoes were being brought in, this would lessen the amount of revenue derived from collection of duties. Any loss in revenue would be in direct relation to any quantity decrease. There would undoubtedly be some additional cost in the administration of the domestic shipping standards to imported tomatoes, but it is not anticipated that such costs would be substantial.

7 U.S.C. 608E—1

608e—1. Import prohibitions on tomatoes, avocadoes, limes, etc., rules and regulations.

Notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture, pursuant to section 608c of this title, contains any terms or conditions regulating the grade, size, quality, or maturity of tomatoes * * * or eggplants (, or regulating the pack of any container of tomatoes) [1] produced in the United States the importation into the United States of any such commodity * * * during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality and maturity provisions of such order or comparable restrictions promulgated hereunder: * * *. *Provided further*, that whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any

TABLE B.—TOMATOES, FRESH: U.S. IMPORTS BY PRINCIPAL SOURCES, 1974-78

Source	1974	1975	1976	1977	1978
	Quantity (thousand pounds)				
Mexico	590,601	559,095	648,584	785,386	814,116
Dominican Republic	2,313	3,652	2,285	4,360	1,972
Canada	299	545	515	637	1,154
Bahamas	2,134	3,767	1,898	1,092	22
Honduras				219	362
Greenland				135	37
Guatemala	222	87	3	35	
Morocco	35				
All other countries	231		63	7	100
Total imports	595,835	567,146	653,347	791,871	817,764
	Value (thousands of dollars)				
Mexico	64,071	64,132	72,429	149,406	161,098
Dominican Republic	220	375	258	632	294
Canada	91	111	152	159	302
Bahamas	87	110	86	68	4
Honduras				56	85
Greenland				34	9
Guatemala	36	17	(1)	1	
Morrocco	12				
All other countries	13		2	1	161
Total imports	64,529	64,745	72,937	150,357	161,806
	Average unit value (per pound)				
Mexico	$0.11	$0.11	$0.11	$0.19	$0.20
Dominican Republic	.09	.10	.11	.14	.15
Canada	.30	.20	.29	.25	.26
Bahamas	.04	.03	.05	.06	.18
Honduras				.26	.23
Greenland				.25	.24
Guatemala	.16	.19	.14	.03	
Morocco	.34				
All other countries	.06		.20	.20	.16
Total imports	.11	.11	.11	.19	.20

[1] Less than $500.

Note 1: Unit values calculated from the unrounded figures. Columns may not add to total shown due to rounding.
Note 2: The above country order (ranking) represents up to 8 leading suppliers of the products covered by this table, based on a trade-weighted average, by value, 1974–77.

Source: Compiled from official statistics of the U.S. Department of Commerce.

such commodity, * * * shall be prohibited unless it complies with the grade, size, quality, and maturing provisions (, and in the case of tomatoes any provisions regulating the pack of any container) [1] of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition * * * . Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall establish with respect to the imported commodity, * * * such grade, size, quality and maturity restrictions by varieties, types, or other classifications (, and with respect to imported tomatoes such restrictions on the pack of any container,) [1] as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order * * * .

DEPARTMENT OF THE TREASURY

This is in reply to your request for the views of the Department of the Treasury on H.R. 116, "To amend section 8(e) of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to suject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes."

[1] Language proposed to be added by H.R. 116 shown in parentheses.

The proposed legislation would amend the Agricultural Adjustment Act to require that the same packaging requirements for domestic tomatoes be applied to imported tomatoes.

Domestic tomatoes are processed to meet regulations regarding size, labelling, and packaging. This processing is done by machine. Although imported tomatoes are classified according to size, no separate packaging or labelling is required as with domestic tomatoes. Application of domestic standards to imported tomatoes, as proposed by the bill, would require foreign producers to hire additional workers to do the packaging by hand or to acquire expensive machinery.

If enacted, the bill would result not only in an inflationary increase in the cost of tomatoes, but also in the creation of a non-tariff barrier to trade. Therefore, the Department is opposed to the enactment of H.R. 116.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

DEPARTMENT OF STATE

This is in reply to your request for the views of the Department of State on H.R. 116, a bill "to amend section 8(e) of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes." H.R. 116 would require that imported tomatoes conform with packaging standards for domestically produced tomatoes which are subject to marketing orders, namely those grown in Florida.

The Department of State opposes enactment of H.R. 116. We believe that the bill would have adverse effects on American consumers and on our international economic relations, particularly with Mexico.

Under H.R. 116, imported tomatoes (mainly from Mexico) would have to comply with the packaging provisions of the Federal Tomato Marketing Order which is in effect in Florida even though tomatoes grown and packaged in states other than Florida would not be subject to these requirements. The requirements of this marketing order, which was created by the Florida tomato growers, are intended to standardize packing of Florida tomatoes. We understand that Florida tomatoes are harvested while still fairly hard, in the "mature green" stage, and then sorted and packed by machines in containers or crates. Mexican tomatoes, which amount for over ninety-nine percent of the imports during the Florida tomato growing season are, in contrast, picked when "vine ripe" and hand packed in crates. The Mexican packers must mix different sizes in the crate in order to obtain a snug fit and minimize movement and bruising during shipment. In order to comply with H.R. 116, the Mexican producers would have to pack the same size tomatoes in each crate and incur additional packing costs to protect the easily bruised tomatoes from shipping damage. California growers of "vine ripe" tomatoes currently use the same packing method as do the Mexicans.

It can be seen from the above discussion that there is no economic justification in requiring that soft Mexican "vine ripe" tomatoes be subject to the same packing requirements as harder Florida "mature green" tomatoes. It would only raise prices for the American consumer with no commensurate benefits. It is important to note that imported tomatoes already must meet the same quality and health standards set for domestic tomatoes.

From a broader trade policy viewpoint we also have serious problems with H.R. 116. In recent trade negotiations we have made major progress in opening foreign markets to exports of U.S. agricultural products. In addition, we have been the moving force behind negotiations for an international standards code, aimed at eliminating the use of standards as trade barriers. If we begin to enact standards to protect domestic producers from foreign competition, we only encourage other countries to institute similar barriers to the expansion of our own exports.

President Carter, during his recent visit to Mexico, noted the need to reduce trade barriers with Mexico and committed the U.S. to work toward that end. Passage of a bill which restricts imports of a product that has already been the subject of official Mexican concern would raise questions about the sincerity of our declarations of cooperation and could affect the way the Mexican Gov-

ernment reacts to our requests for removal of various Mexican barriers to U.S. exports.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

OFFICE OF THE GOVERNOR,
STATE HOUSE,
Phoenix, Ariz., April 11, 1980.

Hon. CHARLES VANIK,
House of Representatives, Chairman,
Subcommittee on Trade, Ways and Means Committee, Washington, D.C.

DEAR CONGRESSMAN VANIK: It is our understanding that on April 17, 1980, your committee will receive public testimony of H.R. 116, the so-called Tomato Packaging Bill. We are strongly opposed to this legislation and request that this letter be entered as testimony at your hearing.

H.R. 116 would subject imported tomatoes to the same self-import packing standards of Florida tomato growers. These packing standards benefit the Florida growers who market "mature green tomatoes" that are hard when picked and can withstand rough handling.

These same packing requirements are an impossible requirement to place on tomatoes that are harvested "vine ripe" and therefore can easily be bruised. Such ripe vegetables must be hand packed to assure a snug fit and avoid bruising during transit, necessitating the use of tomatoes varying in size. Growers of vine ripe tomatoes in the U.S. use this same packing methods as the Mexican growers are now using.

It is not apparent why all tomatoes should be packaged the same way from the consumers' point of view. Tomatoes are not sold in the markets by the case but rather by the pound, and the consumer generally can select those tomatoes that are most appealing. Therefore, we see no case for any possible consumers deception by using the hand-packed method for shipping. The hand-packed vine ripe tomatoes are generally superior in both taste and texture to the mature green which have to be gassed to obtain color.

The main point is that "vine ripe" tomatoes must be packed and shipped differently, than "mature green" tomatoes. H.R. 116 is an attempt not to regulate an import industry that has a great economic impact on my State, but rather an attempt to put it out of business.

In our estimation if H.R. 116 is passed, the ultimate loser will be the U.S. consumer. We urge you to defeat this legislation.

Sincerely,

BRUCE BABBITT, *Governor.*

STATE OF ARIZONA,
OFFICE OF ECONOMIC PLANNING AND DEVELOPMENT,
Phoenix, Ariz., April 16, 1980.

Hon. CHARLES VANIK,
U.S. House of Representatives, Chairman,
Subcommittee on Trade, Ways and Means Committee, Washington, D.C.

DEAR CONGRESSMAN VANIK: On April 17, 1980, your committee will receive public testimony on H.R. 116, the so-called "Tomato Packaging Bill". As Chairman of the Office of Economic Planning & Development Board, caring for the well-being of the economy of the United States, I am strongly protesting this bill and would appreciate your including this letter in the testimony at your hearing.

I believe that the description of the bill is misleading because it gives the impression that imported tomatoes are not subject to restrictions comparable to those applicable to domestic tomatoes. To my knowledge, imported tomatoes are subject to the same quality and size standards as domestic tomatoes. Therefore, I fail to see the rationale why imported tomatoes should be subject to the self-imposed packaging standards of Florida tomato growers which they chose to adopt for their own benefit and convenience.

Under no circumstances were these standards set to benefit the consumer. On the contrary, they were derived for the convenience of the Florida growers who

market "mature green tomatoes", that are hard when picked and can withstand rough handling.

On the other hand, tomatoes imported in winter are harvested at the vine ripe stage and can be bruised easily. Unlike the "mature greens", which are packed like tennis balls one size only to a box, they need to be hand packed in slightly larger and smaller sizes to assure snug fit to avoid bruising and damage during transit.

Growers in other parts of the country are well aware of the damage that could occur to vine ripe tomatoes in transit. This method of packaging has been in use for the past 30 years with the California growers. Moreover, northern Florida growers, when picking vine ripe tomatoes at a slightly different time of the year are using the same packaging method.

Finally, the claim that H.R. 116 would eliminate consumer deception is completely unsubstantiated. Consumers buy tomatoes by the pound and not by the carton; only wholesalers and distributors do so. The professionals are very knowledgeable about the different packaging practices in their trade.

The U.S. consumer would suffer from the legislation of H.R. 116, since it would help the Florida growers to monopolize the winter tomato market. This way the U.S. consumer would have to pay higher prices for a product with a quality lacking the superiority in taste, and in texture, inherent to vine ripe tomatoes.

As Chairman of the Office of Economic Planning and Development Board, and as a concerned citizen caring for the economy of both my State and my country, I respectfully urge you to oppose this legislation since it would have an immediate adverse impact on Arizona's economy and ultimately be detrimental to the United States as a whole.

Sincerely,

TERRY ARCHIBALD, *Chairman.*

ARIZONA ECONOMIC PLANNING AND DEVELOPMENT BOARD,
Phoenix, Ariz., April 16, 1980.

HON. CHARLES VANIK,
U.S. House of Representatives, Chairman,
Subcommittee on Trade, Ways and Means Committee, Washington, D.C.

DEAR CONGRESSMAN VANIK: First of all I wish to apologize for the mix-up regarding my testimony before your committee. As chair of the Mexico Trade Relations Subcommittee of the Board of the Office of Economic Planning and Development for Arizona, I had been asked by Governor Bruce Babbitt's office if I would come to Washington to testify, and had agreed to do so although under my other (political) hat I was chairing Arizona's Democratic delegate selection caucuses in a process which began last weekend and continues through May 24th. The governors office called me back on Monday to tell me that they had decided that Congressman Mo Udall was going to testify and I would not need to attend. I did not know until I received a phone call from your staff today that arrangements had ever been completed with you for me to testify, and I wish most deeply to apologize for any inconvenience that this has caused.

I would like to comment on the proposed legislation, H.R. 116, the so called tomato packaging bill, which would have been the subject of my testimony.

First of all from the standpoint of the state of Arizona H.R. 116 would not regulate the sale of imported tomatoes, but would instead be an attempt to put this industry out of business. The direct impact of this would be to cause great economic impact both within Arizona and within Mexico, where growers and farm laborers, packers, truckers, the wholesale and the retail marketing of agricultural products would all be affected.

The indirect impacts would be another loss of opportunity for Mexican workers within Mexico itself as well as for those who immigrate here, and of course another push toward further immigration to make up for the loss of those jobs. It could also impact on the other trade relations we are trying to build with Mexico, to the detriment not only of Arizona but to many American citizens.

Secondly, I believe the bill itself is deceiving, because in fact imported tomatoes are already subject to the same quality and size standards as our own domestic tomatoes and the bill gives the impression that they are not subject to "restrictions comparable to those applicable to domestic tomatoes." Because the law states that imported tomatoes must meet the standards established for existing marketing orders, the Florida growers are trying to impose a standard

set by their winter marketing order for mature green tomatoes on mature ripe tomatoes, a completely different product. Vine ripe tomatoes, which bruise easily, are hand picked and packed for shipment in California lugs in both northern Florida and in California as well as in Mexico, because it is the best way to assure the consumer of a good product when it reaches the market.

This brings up home my third point. As a woman active in the consumer movement, I must object to any bill which would attempt to substitute or give any advantage to mature green tomatoes over the vine ripened tomatoes which have both more flavor and as high or higher nutritional content. I also firmly believe that any bill which lessens competition in any field but particularly in agricultural products has to adversely affect the housewife and the family in these inflationary times. That seems to be the end product of this bill.

Lastly, as you know a similar bill was allowed to die before the Subcommittee on Domestic Marketing, Consumer Relations and Nutrition of the House Committee on Agriculture during the 1977 session. This bill H.R. 744, was identical to the bill before you. It seems that the proponents decided to turn their defeat of packaging legislation into an attempt to call the bill revenue legislation. While there is no question it could impact adversely on the revenue of the state of Arizona if it passes. I think it stretches a point to call this bill real revenue legislation. I hope that H.R. 116 will be allowed to suffer the same kind of fate as H.R. 744.

Thanking you for your consideration and hoping that your decision will carefully weigh the adverse impacts of this bill, I am

Sincerely yours,

JEAN M. WESTWOOD,
Chair, Mexico Trade Relations Subcommittee.

STATEMENT OF CONSUMERS FOR WORLD TRADE

Consumers for World Trade is opposed to H.R. 116, a bill that would require imported tomatoes to meet packaging standards currently imposed on domestic tomatoes.

Mexican vine-ripened tomatoes and domestic green-picked, thick-skinned tomatoes are, in fact, two entirely different produce which cannot be packaged in the same manner without serious damage to the import product.

Should unified package standards be imposed, it is probable that the Mexican exporters will be obligated to ship green tomatoes to the U.S., or to develop different shipping containers of varying sizes according to the size and shape of the tomato. This process may have to be repeated again and again should Florida producers decide to change size designations in the future as often as they have done in the past.

As with all protectionist legislation, the American consumer will be the ultimate victim, by having to pay higher prices for an inferior product in an already inbearably inflated marketplace.

U.S. SENATE,
Washington, D.C., April 11, 1980.

Hon. CHARLES VANIK,
Chairman, Subcommittee on Trade, Ways and Means Committee, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN VANIK: We would like to register our strong opposition to H.R. 116, which will be considered by your Subcommittee on April 17. This bill, which was introduced by Congressman Bafalis of Florida, would amend section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

The law already subjects imported tomatoes to most domestic restrictions, including the same grade and size standards as domestic tomatoes, which are established by existing marketing orders. The only marketing order currently in effect in winter for tomatoes is the Florida marketing order. Through this order, Florida tomato growers have imposed not only grade and size, but certain packaging standards on themselves for their benefit and convenience. Florida tomatoes are green and hard when they are picked from the vine and can withstand rough handling. Imported tomatoes, on the other hand, are harvested at

the vine-ripe stage and are hand or place packed to insure a snug fit, thereby preventing bruising and damage during transit.

H.R. 116, which would require all types of tomatoes—regardless of whether they are vine-ripe or mature greens—to be packaged in the same manner is, in our view, an odious attempt on the part of the Florida tomato growers to circumvent recent administrative decisions concerning the importation of winter vegetables. Enactment of this legislation would severely restrict the importation of winter tomatoes, provide the Florida growers with a virtual monopoly of the market and result in increased costs for the American consumer.

Imported tomatoes currently are packed in the same containers used by California growers and northern Florida growers who market vine-ripe tomatoes. Changing this practice by law would be arbitrary and entirely lacking of any commercial sense. In addition, the question of how imported tomatoes should be packaged was thoroughly reviewed during hearings by the Subcommittee on Domestic Marketing, Consumer Relations and Nutrition of the House Agriculture Committee in October 1977. The bill, H.R. 744, was never reported from Committee and died with the end of the Congressional session. Since H.R. 116 concerns packaging requirements rather than revenue matters, we believe it properly falls under the jurisdiction of the Agriculture Committee.

The American consumer would be the ultimate loser if H.R. 116 is enacted. In a period of spiralling inflation and escalating food prices, it would be unconscionable to ask the consumer to assume additional costs resulting from legislative action. For this reason, and the reasons stated above, we urge you and the other members of the Subcommittee on Trade not to report this bill.

Thank you for your kind consideration to this request. We would also appreciate your including this letter as part of the hearing record.

Sincerely,

DENNIS DECONCINI,
U.S. Senator.
BARRY M. GOLDWATER,
U.S. Senator.

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I appreciate having the opportunity to testify in support of H.R. 116, introduced by our colleague, Congressman Skip Bafalis. I have also introduced an identical measure, H.R. 2169.

This proposal would amend the Agricultural Marketing Agreement Act of 1937 to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

Mr. Chairman, I can think of nothing more simple nor more fair than to require equal conditions of competition between competitive producers. This bill would merely require that imported tomatoes meet the same packaging restrictions as those currently imposed on tomatoes grown in the United States.

Under present federal marketing restrictions, domestic producers must pack only one size of tomato in each shipping container. Mexican tomatoes, however, are imported with various sizes and grades mixed in the same box. This enables Mexican distributors to quote a lower price for what is claimed to be a "comparable" box, and thereby receive an unfair marketing advantage. The differing standards disrupt efforts to establish equal competitive conditions.

In addition, by permitting Mexican tomatoes to be imported without regard to packaging restrictions, consumers may end up paying higher prices for a lower grade or size of tomato. If a price is quoted for a box of imported "medium" size tomatoes, but that box, in fact, actually contains a mixture of small, medium and large tomatoes, the consumer may be getting a predominance of small tomatoes for the price of medium ones.

Through a series of incredible actions based on international politics and a lobbying campaign by the Mexican growers, the domestic winter vegetable producers, located in central and south Florida, are rapidly being forced out of business. Under normal production conditions and fair and equal competitive regulations, Florida and Mexico should be able to equitably share the U.S. winter tomato market. However, with the unfair competitive advantage that the Mexicans are regularly being afforded, the domestic growers are simply unable

to meet the challenge. In the long run, it will be the American consumer who loses, because if the domestic growers, who provide the only competition for the Mexicans, are forced out of business, it is only natural and logical that the Mexicans will have a monopoly on the market and will be able to charge far higher prices for their product. This was clearly demonstrated several years ago when South Florida suffered a freeze, destroying much of the crop for that year. Grocery store prices for tomatoes sky-rocketed immediately.

Mr. Chairman, this legislation is simply a "truth-in-packaging" measure. We require our own producers to abide by certain standards. Why should not producers of imported products be required to meet these same standards? I think you will agree that they should and I urge your prompt and favorable consideration of this bill.

FLORIDA FRUIT & VEGETABLE ASSOCIATION,
Orlando, Fla., March 12, 1980.

Hon. L. A. "SKIP" BAFALIS,
U.S. House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR SKIP: Earlier this week I received notice through Ways and Means Release, Subcommittee on Trade PR#52, that the Subcommittee on Trade would conduct a public hearing on Monday, March 17, on certain tariff and trade bills, including H.R. 116, to amend section 8e of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to subject imported tomatoes to restrictions comparable to those applicable to domestic tomatoes.

On behalf of the Florida Fruit & Vegetable Association, which has a long record of support of this legislation, I would like to go on record urging a favorable report of this bill. It contains a much needed amendment to Section 8e of the Agricultural Adjustment Act and, as you know, this has previously received favorable action by the Senate but the House, up to this time, has failed to act on it. In view of this, it is imperative that this bill be reported out favorably and enacted.

With much appreciation for your interest in this matter, I am

Sincerely yours,

JOFFRE C. DAVID,
Executive Vice President.

H.R. 4006

To apply duty-free treatment under certain circumstances to articles produced in the insular possessions of the United States, and for other purposes.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 4006, if enacted, would amend the Tariff Schedules of the United States (TSUS) to change, for a temporary period, the circumstances under which an article (other than watches and watch movements) produced in a U.S. insular possession which contains foreign materials to the value of more than 50 percent may be accorded duty-free treatment upon importation into the customs territory of the United States.[1] General Headnote 3(a) of the TSUS currently sets forth the general rule that products of insular possessions which do not contain foreign materials to the value of more than 50 percent of their total value are exempt from duty.[2]

Section 1 of the legislation proposes to amend General Headnote 3(a) by redesignating clauses (ii) and (iii) as (iii) and (iv), respectively, and by substituting the following for clause (i):

"(i) Except as provided in subdivision (a)(ii) of this headnote; headnote 6 of schedule 7, part (2), subpart E; and headnote 4 of schedule 7, part 7, subpart A; articles imported from insular posssessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules.

"(ii)(A) Any article which is the growth or product of any insular possession referred to in subdivision (a)(i) of the headnote, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession, or of the customs territory of the United States, or of both, coming to the customs territory of the United States directly from any such possession shall—

"(I) if such article is other than a watch or watch movement, and contains foreign materials to a value of not more than 50 percent of its total value, be exempt from duty; and

"(II) if such article is a watch or watch movement, and contains foreign material to a value of not more than 70 percent of its total value, be exempt from duty.

"(B) All articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty."

Finally, section 1 would amend clause (iii) of headnote 3(a) by substituting the phrase "appropriate value specified in (ii)A(I) and (II)" for the existing phrase "value of more than 50 percent".

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[1] The customs territory of the United States is defined in General Headnote 2 of the TSUS to include "only the States, the District of Columbia, and Puerto Rico."

[2] General Headnote 3(a)(i) of the TSUS provides: "Except as provided in headnote 6 of schedule 7, part 2, subpart E, and except as provided in headnote 4 of schedule 7, part 7, subpart A, articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the valpe of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty."

It does not appear that any of the amendments provided for in section 1 of the legislation would result in a substantive change in existing administrative practice under headnote 3(a) with respect to articles imported from U.S. insular possessions.

Section 2, however, proposes to add a new subpart A to Part 1 of the Appendix to the TSUS establishing four new headnotes which provide for a temporary change in current practice with respect to the application of General Headnote 3(a) to articles (other than watches and watch movements) produced in a U.S. insular possession which contain foreign materials to a value of more than 50 percent but not more than 70 percent of their total value. Such articles would be exempt from duty if entered during the "temporary period" January 1, 1979, to December 31, 1981, so long as such articles are not determined to be "import sensitive" [3] and the quota level established for such articles has not been reached.[4]

The effect of the amendments provided for in section 2 of the legislation would be to temporarily increase the percentage of foreign materials from 50 percent to 70 percent which can be contained in an article produced in a U.S. insular possession without its losing its eligibility for duty-free treatment upon importation into the customs territory of the United States.[5] The legislation is intended to assist manufacturers in the insular possessions, which, in the face of worldwide increases in raw-material costs, have been having a difficult time fulfilling the 50-percent requirement of General Headnote 3(a) and still maintaining a competitive price.[6]

Section 3 of the legislation provides for the President to prepare a report (before January 1, 1981) for the Congress on the effect of the amendments made by sections 1 and 2, and section 4 provides that such amendments shall become effective with respect to articles entered, or withdrawn from warehouse, on or after January 1, 1979.

AFFECTED ARTICLES

Among the principal articles imported into the customs territory of the United States from insular possessions are textile fabrics and apparel, chemicals and chemical products, fuel oil, rum, and watches and watch movements.

U.S. IMPORTS FROM INSULAR POSSESSIONS

U.S. imports from the various U.S. insular possessions are shown in the following table.

U.S. IMPORTS FROM THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA

[In thousands of dollars]

Source	1975	1976	1977	1978	1979
Virgin Islands	1,614,233	1,936,460	2,525,914	2,431,035	2,884,481
Guam	17,357	11,997	7,507	2,298	8,301
American Samoa	45,432	52,628	57,266	105,713	120,702
Total	1,677,022	2,001,085	2,590,687	2,539,046	3,019,484

Source: Official statistics of the U.S. Department of Commerce.

[3] Proposed headnote 4 to Part 1A of the Appendix provides that articles which are determined to be import sensitive by the President (after taking into account the recommendations of the Office of the Special Representative for Trade Negotiations, currently the Office of the United States Trade Representative) would be subject to column 1 rates of duty.

[4] Proposed headnote 2 to part 1A of the Appendix provides that no article may be entered during any calendar year within the temporary period (January 1, 1979, to December 31, 1981) from the insular possessions if "a quantity of such articles having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the immediately preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974" has already been entered during that calendar year.

[5] Watches and watch movements produced in insular possessions have been able to contain foreign materials of up to 70 percent of their value and still be entitled to duty-free treatment since Aug. 9, 1975, as a result of Public Law 94-88 (89 Stat. 433).

[6] Currently, under General Headnote 3(a) any increase in raw-material costs must result in an addition of twice that amount in the invoice price of the finished article in order for it to remain eligible for duty-free treatment upon importation into the customs territory of the United States (assuming that raw-material costs accounted for approximately 50 percent of the total cost prior to the price increase).

Attached as an appendix to this report are tables from the Bureau of the Census Publication FT800 showing, for calendar year 1978, total shipments from U.S. possessions to the United States, by TSUSA commodities.

TECHNICAL COMMENTS

As pointed out earlier in this report, it does not appear that the amendments to General Headnote 3(a) which are proposed in section 1 of the legislation would make any substantive change in current administrative practice. Nor do they appear to be necessary as the foundation for the amendments proposed in section 2 of the legislation. The Committee may therefore wish to consider deleting section 1 of the legislation and renumbering the remaining sections.

Section 2 of the legislation defines the term "temporary period" as "the period beginning January 1, 1979, and ending at the close of December 31, 1981". It is suggested that this be amended to read "the 3-year period beginning on the date of enactment of this act". Retroactive application of the provisions of this legislation would create difficult administrative problems for the U.S. Customs Service and would have little or no effect on industry in the insular possessions (other than to provide windfall profits for transactions which have already occurred) since manufacturers there will not have been given the opportunity to plan their business operations to conform to the new law.

Similarly, it is suggested that the effective date for the legislation in section 4 be amended by striking out "January 1, 1979" and inserting "the date of enactment of this act" in lieu thereof.

It is further suggested that the parentheses in "(2)" on line 5 of page 2 be deleted, that the semicolon on line 6 of page 2 be changed to a comma, and that line 22 on page 5 be amended to read "Office of the United States Trade Representative".

APPENDIX A

EXCERPT FROM CENSUS PUBLICATION FT800 (ANNUAL 1978): TABLE SHOWING SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES, BY TSUSA COMMODITIE:

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY

[See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics]

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
	VIRGIN ISLANDS			
	Total shipments	(—)	—	$2,438,972,175
	U.S. merchandise returned	(—)	—	7,937,568
	Products of Virgin Islands	(—)	—	2,431,034,607
118.3000	Malted milk and art of milk or cream, n.s.p.f	Lb	532,657	101,877
125.8000	Live plants suitable for planting n.s.p.f	No	42	1,050
127.1000	Garden and field seeds excp grass A forage crp seed n.s.p.f.	Lb	350	1,838
168.4020	Rum, in containers, ea holding 1 gal or less	Pfg	31,288	115,311
168.4040	Rum, in containers, ea over 1 gal	Pfg	3,471,913	3,547,521
168.4540	Whiskey, Scotch A Irish in cont ov 1 gal ea	Pfg	8,953	8,950
270.2560	Books, n.s.p.f. wholly/prtly work of natl O domiciliary of U.S.	No	85	1,958
270.2580	Other books, not specially provided for	No	1,500	3,000
274.4500	X-ray film, exposed, whether or not developed	(—)	—	1,650
274.7040	Oth than lithograph printed matter, n.s.p.f	Lb	15	21,431
274.7300	Printed matter n.s.p.f. suitable for production of duty-free bks.	(—)	—	25,275
307.6415	Yarns of wool or hair nets not ov 5,599 yd per lb	Lb	18,023	131,087
310.6035	Yarns, nes M-M fibers, other	Lb	413	1,097
336.6043	Oth wool woven fab, n.s.p.f. ov 10 oz syd ov $2 lb	Syd	771,920	2,784,812
		Lb	695,676	—
336.6053	Oth wool woven fab, ov 8 n/ov 10 oz syd ov $2 lb	Syd	38,653	73,485
		Lb	21,243	—
336.6055	Oth wool woven fab, ov 10 n/ov 12 oz syd ov $2 lb	Syd	255,554	728,684
		Lb	188,066	—
336.6057	Oth wool woven fab, n.s.p.f. ov 12 oz syd ov $2 lb	Syd	180,147	665,406
		Lb	188,656	—

See footnote at end of table.

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY—Continued

[See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics]

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
345.3020	Knit fab of wool, circular	Lb	54,743	255,207
345.5011	Knit fab of man-made fib containing ov 17 percent of wool by weight.	Lb	476,636	2,186,950
345.5035	Knit fab of man-made fib cir, double knit polyester	Lb	18,017	86,594
345.5055	Cir knit fab of MM fiber oth polyester	Lb	262	1,384
345.5075	Knit fab of MM fib, polyester, oth	Lb	21,631	73,599
359.3000	Tex fab n.s.p.f. of wool	Syd	8,405	28,292
		Lb	10,538	—
380.0640	Men's and boys cotton knit t-shirt exc all-white not ornmted.	Doz	40	1,205
		Lb	110	—
380.6611	Men's sport coats and jackets, wool, n/kn ov $4 lb	Doz	18	4,188
		Lb	250	—
401.1000	Benzene	Gal	5,285,074	3,978,169
401.7200	Toluene	Gal	33,316,977	18,791,262
401.7420	Para-xylene	Gal	2,206,178	317,721
401.7450	Xylene, other	Gal	28,634,083	15,120,492
406.1070	Specified vat dyes	Lb	136,850	1,203,293
406.1080	Coal tar color dyes, etc oth	Lb	31,900	288,346
406.5060	Solvent dyes	Lb	20,750	331,453
406.5080	Colors, vat dyes, stains (exc toners)	Lb	1,053,446	10,488,772
407.7220	Sulfamethazine	Lb	27,204	217,389
407.8506	Oth alkaloids, their salts and derivatives	Lb	2,420	7,426
407.8511	Ampicillin and its salts	Lb	5,698	229,033
407.8519	Oth antibiotics	Lb	33,777	3,864,603
407.8521	Sulfathiazole and sul fathiazole sodium	Lb	164,404	713,902
407.8523	Oth anti-infective sulfonamides n.e.s	Lb	30,044	393,642
407.8527	Anti-infective agents n.s.p.f	Lb	77	31,175
407.8536	Cardiovascular drugs exc alkaloids and their derivatives	Lb	651	50,215
407.8547	Propoxyphene hydrochloride	Lb	16,325	329,412
407.8549	Oth drugs affecting central nervous system	Lb	21,993	101,523
407.8555	Anti depressants, tranquilizers, oth psychotherapeutic agents.	Lb	2,586	38,992
407.8576	Vitamin E (di-a-tocopheral and its esters)	Lb	1,196	6,773
407.8579	Drugs suitable for medicinal use oth than vitamins	Lb	1,013	51,948
407.8589	Oth Vitamins, n.s.p.f	Lb	117,622	9,599,388
417.1240	Potassium sulfate (potash alum)	Lb	271,945,280	22,619,924
437.3220	Oth antibiotics-erythromycins	Lb	176,700	8,928
437.3230	Tetracyclines	Grm	275,642	50,525
438.0200	Drugs a related products in capsules, pill, etc. n.s.p.f	—	—	279,090
439.5030	Oth anti-infective agents	Lb	123	1,720
440.0000	Medicinal preps in capsules, ampoules, pills, jubes, etc. n.s.p.f.	—	—	8,529
461.1500	Bay rum or bay water	Lb	43,826	64,648
461.3500	Perfumes, colognes, and toilet water contain alcohol	Lb	1,113	7,581
461.4505	Shaving preps containing alcohol (incl after shave)	Lb	14,181	26,426
475.0510	Crude petrol shale etc. inc reconstd test un 25 deg api	Bbl	60,146	661,605
475.0525	Fuel oil a tcr un 25 degrees api, suv 100 deg ov 45 nov 125 secs.	Bbl	297,349	3,979,374
475.0535	Fuel oil a tcr un 25 deg API nes suv 100 deg a ov 125 sec	Bbl	80,308,044	911,373,867
475.0545	Fuel oil a tcr un 25 deg API, oth	Bbl	48,456	496,675
475.1010	Crude petroleum, shale oil inc reconst test 25 deg API a ov	Bbl	374,364	4,782,698
475.1015	Fuel oil tcr 25 deg API a ov nes suv 100 und 45 sec	Bbl	54,882,347	542,601,199
475.1025	Fuel oil a tcr 25 deg API a ov 100 deg 45 sec n/ov 125 sec	Bbl	5,213,961	75,340,051
475.1035	Fuel oil tcr 25 deg, API a ov nes suv 100 deg a ov 125 sec	Bbl	9,240,723	120,079,189
475.2520	Gasoline	Bbl	30,450,077	490,915,856
475.2530	Jet fuel, napths-type	Bbl	4,838,757	69,341,831
475.2550	Jet fuel kerosene-type	Bbl	4,982,275	14,792,358
475.3000	Kerosene derived from shale oil, petroleum, or both	Bbl	3,928,134	58,665,569
534.8700	Earthen ware or stoneware, FG smokers, etc art, nes ov $10 doz.	DPC	47	3,289
612.1020	Copper waste and scrap, unalloyed	Clb	154,844	46,750
612.1040	Brass waste and scrap	Clb	144,463	48,815
		Clb	187,617	—
612.1060	Copper waste a scrap, alloyed n.e.s	Clb	4,600	1,610
		Clb	4,700	—
618.1000	Aluminum waste a scrap	Lb	21,843	2,678
711.3400	Clinical thermometers	No	766,087	173,264
711.3700	Thermometers n.s.p.f	(—)	—	11,154
	Watch movts, assembled:			
716.0800	Having over 17 jewels	No	145,955	1,515,807
	Having a balance wheel and hairspring:			
716.1120	Ov 0.6 n/ov 0.8 inch wide n/ov 1 jewel	No	10,000	62,315
716.1420	Ov 1 but not ov 1.2 inch wide n/ov 1 jewel	No	3,800	27,655
716.2120	2 to 7 jewels ov 0.6–0.8 inch wide	No	1,800	15,930
716.2140	Ov 0.6–0.8 inch wide, without a bal wheel and a hairspring 2 to 7 jewels.	No	1,498	37,076

See footnote at end of table.

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY—Continued

(See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics)

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
716.2420	Ov 1 but n/ov 1.2 inch wide, having a bal wheel and a hairspring 2 to 7 jewels.	No	7,000	57,430
716.2440	Ov 1 n/ov 1.2 inch wide, without a bal wheel and a hairspring 2 to 7 jewels.	No	499	10,816
	Having 17 jewels:			
716.3037	N/ov 0.6 inch wide, having a bal wheel and a hairspring.	No	1,313,783	11,116,232
716.3137	Ov 0.6 to 0.8 inch wide, having a bal wheel and hairspring.	No	2,041,088	13,792,575
716.3157	Ov 0.6 to 0.8 inch wide, without a bal wheel and a hairspring.	No	959	7,344
716.3337	Ov 0.9 to 1 inch wide, having a bal wheel and a hairspring.	No	45,185	307,246
716.3434	Having 14 jewels, ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	650	4,862
	Having 17 jewels:			
716.3437	Ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	808,866	6,366,100
716.3537	Ov 1.2 to 1.5 inch wide, having a bal wheel and a hairspring.	No	29,603	241,480
716.3637	Ov 1.5 to 1.77 inch wide, having a bal wheel and a hairspring.	No	175	1,881
716.3655	Having 15 jewels, ov 1.5 to 1.77 without a bal wheel and a hairspring.	No	1,100	12,375
	Having 17 jewels:			
717.3037	Adj, not ov 0.6 inch wide, having a bal wheel and a hairspring.	No	143,894	1,662,029
717.3137	Adj, ov 0.6 to 0.8 inch wide, having a bal wheel and a hairspring.	No	24,488	185,750
		Adj	29,488	
717.3437	Adj, ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	46,394	486,036
		Adj	46,394	
718.3337	Self-winding ov 0.9 to 1 inch wide, having a bal wheel and a hairspring.	No	2,000	22,490
718.3434	Having 14 jewels, self winding, ov 1-1.2 inch having a bal wh and a hairspring.	No	1,200	16,594
718.3437	Having 17 jewels, self winding, ov 1 to 1.2 inch wide, having a bal wh and a hairspring.	No	56,614	685,790
720.2400	Watch cases, of silver part precious metal or set etc	No	5,769	15,185
720.2800	Watch cases, n.s.p.f	No	9,627	29,846
720.2900	Watch bezels, backs and centers, n.s.p.f	No	3,499	1,175
720.7505	Oth assemblies a subassemblies dutiable at 22.5 percent ad valorem.	(—)	—	2,261
720.9000	Watch parts, n.s.p.f	(—)	—	3,135
740.1020	Jewelry etc. and parts of precious metal	(—)	—	69,966
740.3800	Jewelry etc. and parts n.s.p.f. value ov $0.20 per dozen	(—)	—	779,790
766.2560	Antiques n.s.p.f	(—)	—	1,914
801.0000	Articles reimported under lease to foreign manufacturer	(—)	—	36,034
801.1000	Articles reimported, because do not conform to specifications.	(—)	—	17,503
806.2040	Value of repair or alteration art ex eng exported for same.	(—)	—	28,224
	All other articles [1]	(—)	—	21,775
	GUAM ISLAND			
	Total shipments	(—)	—	7,830,835
	U.S. merchandise returned	(—)	—	5,532,812
	Products of Guam Island	(—)	—	2,298,023
110.1020	Yellow fin, whole, fresh chld or froz but not othwse pres	Lb	68,946	26,414
110.1045	Skip Jack tuna, fresh, chilled or froz not othwse presv	Lb	460,340	169,770
110.1050	Tuna nes fresh, chilled or froz, but not othwse presv	Lb	86,200	35,342
380.8139	Men's or boy's shirts of mm fibers, knit other	Doz	3,766	173,492
		Lb	19,443	
380.8445	Men's a boy's sport shirt man-made fiber not knit	Doz	105	4,463
		Lb	580	
382.7853	Women's shirts, other	Doz	1,040	31,186
		Lb	4,550	—
607.1200	Iron a steel scrap content dutiable alloy	Ltn	3	1,721
612.1040	Brass waste and scrap	Clb	78,610	36,635
		Glb	107,871	—
612.1060	Copper waste a scrap alloyed nes	Clb	109,956	39,158
		Glb	114,437	—
618.1000	Aluminum waste a scrap	Lb	290,562	89,724
624.0400	Lead waste and scrap	Clb	34,798	11,845

See footnote at end of table.

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY—Continued

[See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics]

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
	Watch movts assembled:			
	Having 17 jewels:			
716.3037	N/ov 0.6 inch wide, having a bal wheel and a hairspring.	No	2,300	12,215
716.3137	Ov 0.6 to 0.8 inch wide, having a bal wheel and a hairspring.	No	91,000	445,817
716.3337	Ov 0.9 to 1 inch wide, having a bal wheel and a hairspring.	No	1,200	5,988
716.3437	Ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	160,501	811,954
716.3537	Ov 1.2 to 1.5 inch wide, having a bal wheel and a hairspring.	No	4,600	27,485
716.3637	Ov 1.5 to 1.77 inch wide, having a bal wheel and a hairspring.	No	1,000	6,892
740.1020	Jewelry etc and parts, of precious metal	(—)	—	7,007
801.0000	Articles reimported, under lease to foreign manufacturer	(—)	—	51,160
801.1000	Articles reimported, because do not conform to specifications.	(—)	—	1,420
870.1000	Records, diagrams and other data on explopn etc o/s the U.S.	(—)	—	202,400
870.2700	Specimens of Archeology etc imported for exhibition etc	(—)	—	103,230
	All other articles [1]	(—)	—	7,705
	AMERICAN SAMOA			
	Total shipments	(—)	—	106,504,737
	U.S. merchandise returned	(—)	—	792,261
	Products of American Samoa	(—)	—	105,712,476
110.1012	Albacore, fresh, chilled or frozen but not other wse pres	Lb	504,360	100,872
111.1500	Shark fins not other wse prep. not in airtite contrs	Lb	315	1,997
112.5020	Tuna, white meat, no oil within quota in airtite cont n/ov 15 lb ea.	Lb	8,218,157	16,004,478
112.3040	Tuna, except whte mt, no oil in airtite cont n/ov 15 lb ea	Lb	19,071,270	24,075,287
112.3400	Tuna, meat not in oil in airtite cont ov 15 lb abv quota	Lb	5,668,738	9,340,182
112.9000	Tuna, prep or presvd, in oil in airtite containers	Lb	38,642,607	51,056,277
113.5040	Fish, nes, prep or pres, n.s.p.f. no oil, in contrs not ov 15 lb	Lb	103,488	31,434
136.0000	Dasheens, fresh, chilled, or frozen	Lb	107,795	37,903
184.5510	Canned fish and canned whale meat, not fit for human consump.	Lb	11,966,608	4,091,420
184.5530	Fish a whale meal a scrap unfit for human consump	Lb	2,005	171,809
222.4400	Bskts and bags of unspun veg materials, n.e.s	No	160	1,115
740.1020	Jewelry etc. and parts of precious metal	(—)	—	104,480
740.2000	Necklace, val n/ov 30 cents per doz, wholly of plastic shapes mounted on fib strings.	Doz	79,528	13,957
740.3800	Jewelry etc and parts n.s.p.f. valued ov $0.20 per doz	(—)	—	656,552
741.3000	Beads bugles and spangles n.e.s. not strung and not set	(—)	—	1,060
801.0000	Articles reimported under lease to foreign manufacturer	(—)	—	16,868
	All other articles [1]	(—)	—	6,785

— Represents zero.
[1] Commodities for which total shipments were valued less than $1,000.

DEPARTMENT OF THE INTERIOR

I would like to offer the views of the Department of the Interior on H.R. 4006, "To apply duty-free treatment under certain circumstances to articles produced in the insular possessions of the United States, and for other purposes."

H.R. 4006 would amend General Headnote 3(a) of the Tariff Schedules of the United States (TSUS) to liberalize for a three-year period the requirements for duty-free entry of products imported into the customs territory of the United States from the United States territories.

This bill would continue the current duty-free provisions for territories and would expand the provisions to include articles containing foreign materials exceeding 50 percent, but not exceeding 70 percent of the article's appraised value, for the period January 1, 1979 to December 31, 1981. Duty-free entry under this expanded provision would be subject to two conditions. First, the article must not be designated by the President as import sensitive. Second, the quantity of the article entered during a calendar year must not be in excess of an amount

equal to $25,000,000 adjusted by the change in the gross national product of the United States since 1974.

Any item determined by the President to be import sensitive would be dutiable at the column one rate of duty. In making determinations of import sensitivity the President would take into account the advice of the United States Trade Representative (USTR). Interested parties would be able to submit petitions to USTR requesting that articles be designated as import sensitive. Procedures for submission and review of petitions would be established.

Before January 1, 1981, the President would be required to prepare, with the assistance of the Secretaries of the Treasury, Commerce and the Interior, and submit to Congress a report on the effect of these amendments. In particular, their effects on encouraging the development of light industry in the territories and on lessening their dependence on the Federal Government would be addressed, as well as their effect on generating increased employment, wages and tax revenues, and broadening the economic base of the territories.

The Department of the Interior supports the intent of H.R. 4006 to foster the development of light industry in the territories and to liberalize the eligibility requirements for existing firms. We note that this purpose fits well wih the President's February 14 announcement of a comprehensive policy to encourage economic development in the territories. We will be pleased to work with Treasury and Commerce to help prepare the report to Congress required under section 3 of the bill. We believe the proposed three year trial period will enable the Administration to evaluate alternative ways of achieving the goals of Headnote 3(a) in order to facilitate permanent revision of the headnote.

Recognizing the legitimate needs of certain firms that have been adversely affected by changes in exchange rates and component prices, the Department supports the proposed 70 percent foreign materials limitation during the three-year trial period if it is restricted to existing firms' shipments of presently produced articles at historical levels. The Department has reservations, however, about the economic benefits to the insular possessions of liberalizing the rules of origin as specified in H.R. 4006 for new firms or new products. The Department believes that granting tariff preferences based on a firm's contribution to the economies is more appropriate than an increase in the foreign content limitation.

Congress has already established a satisfactory measure of the economic contribution for the Generalized System of Preferences (GSP) in the Trade Act of 1974. Rather than basing preferential treatment on foreign content, that Act uses a "value-added" concept. The Act requires that a minimum percentage of an article's value consist of local products or local cost of processing, i.e., value added. This Department recommends that a similar value added requirement be established as an alternative criterion for duty-free entry under Headnote 3(a) for new industries or products. We propose that value added through direct processing costs by not less than 25 percent of the value of dutiable foreign materials. This standard would be considerably more liberal than the GSP value-added test. Nevertheless, it would tend to encourage more substantial labor input in the development of industry in the territories.

We believe that it is necessary to provide some assurance that firms established under the new criteria will be able to continue operations for a reasonable period. The costs of establishing new operations can seldom be justified if the period of operations is only three years. There should be a provision permitting those firms established during the three-year period to continue to use the same value-added test for an additional five years, should the value-added test not be renewed.

As drafted, the proposed bill could attract certain enterprises for the purpose of circumventing United States import restrictions applied to import sensitive products pursuant to other Federal policies or programs, including the textiles subject to the multi-fiber arrangement and other articles subject to import relief. We believe that this potential problem could be greatly alleviated by exempting from the proposed liberalized treatment those articles subject to import restraint agreements or import relief under existing trade legislation.

The Administration intends to implement the import sensitivity provision in such a way as to be consistent with United States Government policy in favor of developing the territorial economies without, at the same time, unduly impacting import-sensitive domestic industries with increased imports entering the United States free of duty under new Headnote 3(a) provisions. We believe

that such increased imports could place an undue burden on domestic industries already acknowledged as import sensitive under trade laws. The President could, however, decide to allow entry of articles designated as import sensitive subject to such conditions as may be appropriate if an investigation initiated by a petition determines that Headnote 3(a) duty-free treatment would not adversely impact on the domestic industry. Appropriate conditions could include quotas or competitive need ceilings, and specification of the number of local workers utilized in production processes.

Under H.R. 4006 refined petroleum products containing foreign crude oil could gain additional benefits from duty-free treatment under Headnote 3(a). We are strongly opposed to the use of Headnote 3(a) in a fashion that would provide windfall benefits to refineries in the territories. Lowering the cost of imported refined oil products also conflicts with the President's energy program. We recommend that the final version of H.R. 4006 exempt from duty-free treatment under Headnote 3(a) refined petroleum products derived wholly or in part from foreign crude.

The Department notes as a technical matter that, because more than one year of the proposed three-year temporary period has already elapsed, it would be appropriate to change the beginning of the period to January, 1981.

The Department also recommends the use of the term "territory" rather than "insular possession" throughout Headnote 3(a). We believe that "possession" is a term with colonialistic overtones, whereas "territory" is a more appropriate description for internally self-governing jurisdictions.

I am submitting for your consideration a number of specific amendments that would implement the views and positions stated above.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

SUGGESTED AMENDMENTS TO H.R. 4006

Delete the words "insular possession" or "possession" wherever it appears and insert in lieu thereof the word "territory".

On page 2, in line 23, insert the words "watch movement", the words "or refined petroleum products derived wholly or in part from foreign crude petroleum,"

Delete "1979" wherever it appears and insert in lieu thereof 1981".

Delete "1981" wherever and insert in lieu thereof "1983".

On page 4, in line 6, strike the period and insert in lieu thereof the following language: ; and if articles produced by a specific manufacturer are entered into the United States under paragraph 2(c) of this subpart duty-free during such temporary period, such articles of such manufacturer may continue to be imported into the United States under this subpart duty-free in no greater annual quantity than the largest quantity imported in any calendar year of the temporary period until the close of December 31, 1988.

On page 4, in line 16, insert the word "contains" the following language: is produced by the same firm as, and entered in no grater quantity in any one calendar year than, an article entered during either of the calendar years 1978 or 1979 and

On page 4, line 18, delete the word "and" and insert the word "or".

On page 4, in line 18, delete the semicolon and the word "and" and insert in lieu thereof the following language: , or contains local material or has direct costs of processing operations performed in the territories that amount to not less than 25 percent of the value of the foreign material contained in the article that would be subject to duty if entered into the United States customs territory; and

On page 4, in line 24, delete the word "articles" and insert in lieu thereof the word "article".

On page 5, delete lines 5 through 11, and insert in lieu thereof the following:

"3. In determining the extent to which any article produced or manufactured in any territory contains foreign material, no material shall be considered foreign which, at the time such material is entered, may be imported into the customs territory from a foreign country free of duty."

On page 5, delete lines 12 through 19 and insert in lieu thereof the following language:

"4. (a) Unless permitted by the President and subject to such conditions as he may prescribe, this Subpart shall not apply to articles subject to (1) bilateral

or multilateral import restraint agreements pursuant to section 204 of the Agricultural Act of 1956, as amended, articles subject to import relief under section 203 of the Trade Act of 1974, as amended or section 22 of the Agricultural Adjustment Act of 1933, as amended or (2) any other article which the President determines to be import sensitive."

AMERICAN WATCH ASSOCIATION, INC.,
New York, N.Y., March 21, 1980.

Hon. CHARLES A. VANIK,
Chairman, House Subcommittee on Trade
Cannon House Office Building, Washington, D.C.

DEAR MR. VANIK: I am writing on behalf of the American Watch Association to comment on legislation (H.R. 4006) before the Subcommittee on Trade that would temporarily raise from 50 percent to 70 percent the ceiling on foreign content for articles, other than watches and watch movements, that are eligible for duty-free tariff treatment under General Headnote 3(a) of the Tariff Schedules of the United States. The AWA is a trade association representing approximately 40 member and associate member U.S. companies which are engaged in the manufacture, assembly or importation of watches, watch movements and/or watch parts for sale in the U.S. and world markets. Members of the Association include the companies which market such well-known brands as Audemars Piguet, Benrus, Bradley, Bulova, Chopard, Citizen, Concord, Girard-Perregaux, Hamilton, Helbros, Longines, Lucien Piccard, Mido, Movado, Omega, Piaget, Pulsar, Rolex, Seiko, Wittnauer and many others. AWA member companies operating in the U.S. insular possessions include Atlantic Time Products Corp., Master Time Co., Ltd., Standard Time Company and Unitime Industries, Inc.

The AWA has consistently supported legitimate efforts to stimulate the economies of the U.S. insular possessions. Moreover, through the years, the AWA has strongly endorsed the unswerving view of Congress that the best way to do this is to promote light industry in the territories.

This policy, insofar as it has involved the watch assembly industries in the insular possessions, has proved to be a success both to the watch industry and to the territorial economies. AWA member companies have played a large part in the watch assembly industry in the Virgin Islands for more than 20 years contributing substantial benefits to the islands in terms of income tax revenues, customs duties and salaries to insular workers.

Nonetheless, the financial position of AWA member companies in the Virgin Islands, and that of the entire insular possessions watch assembly industry, is fragile. The industry continues to exist even in times of direct imports of cheap electronic watches and watch movements as a result of the carefully designed and relatively stable General Headnote 3(a) incentives presently in place.

We are concerned that proposed amendments to the statutory language of General Headnote 3(a) may result in disturbing this delicate balance of incentives and put watch assembly firms out of business.

In the first place, as currently drafted, H.R. 4006 could be misread. Clearly, the purpose of H.R. 4006 is to grant, on a temporary basis and with certain restrictions, to goods other than watches and watch movements, a benefit that watches and watch movements presently enjoy on a permanent basis—a 70–30 as opposed to a 50–50 foreign content test as the basis for General Headnote 3(a) duty-free treatment. However, unfortunately, the language of H.R. 4006 could be misinterpreted so that watches and watch movements would be permitted to use the 70–30 test during the temporary period only.

Such an unintentional inclusion of watches and watch movements in the regime established for the temporary period would reverse the decision of Congress in 1975 (Public Law 94–88) to permanently raise the foreign content ceiling in General Headnote 3(a) to 70 percent for watches and watch movements. Moreover, inclusion of watches under Section 2 of the bill would place assemblers in the insular possessions in great jeopardy at a time when inflationary pressures are already beginning to put territorial watch companies at a competitive disadvantage with direct watch imports.

To ensure that no such misinterpretation of H.R. 4006 is possible, we would recommend the following changes to the language of H.R. 4006:

1. In Section 2, the heading of Subpart A, should be changed to read "Subpart A—Temporary Tariff Treatment of Certain Products of the Insular Possessions Other Than Watches and Watch Movements".

2. In Section 2, Headnote 2 of Subpart A, after the phrase "In applying general headnote 3(a) during the temporary period" and before the comma, insert the words "to articles other than watches and watch movements,".

3. In Section 2, Headnote 2, delete subsection (a) and change subsections (b) and (c) to subsections (a) and (b), respectively.

A second area of deep concern to AWA member companies is the Administration's proposed substitute for H.R. 4006, calling for a statutory requirement that in order for articles to be eligible for duty-free tariff treatment, they must have value added in the form of direct processing costs in the insular possessions of at least 25 percent of the value of the foreign components that would be subject to duty if imported directly into the United States. This proposal is reported to apply only to articles other than watches and watch movements.

The AWA cannot precisely judge the advantages or disadvantages of such an Administration proposal in promoting non-watch related light industry in the territories. However, we are convinced that the proposal, if extended now or at some later time to the insular watch assembly industry, would almost certainly force all existing watch assemblers in the Virgin Islands to stop production.

First, a minimum 25 percent direct-processing-cost/value-added test would force assemblers to double, triple or even quadruple their insular labor input. These firms already operate at levels of marginal profitability and such a requirement would drive assemblers out of business.

Second, any minimum value-added test, whatever the percentage, must work to the advantage of low-price foreign suppliers and to the competitive disadvantage of higher-price suppliers. Under the Administration proposal, imported watch parts costing $8.00—a cost borne by many so-called high-labor companies—would trigger a $2.00 minimum value-added requirement for duty-free benefits. On the other hand, a $4.00 watch subassembly—the cost of certain low-labor sub-assemblies—would involve only a $1.00 insular labor input to meet the General Headnote 3(a) test. Under these circumstances, the Administration proposal would favor low-labor suppliers and drive high-labor assemblers—the bulwark of the existing watch assembly industry in the Virgin Islands—out of business. Such a result would certainly be harmful to the insular possessions economies.

Third, any direct-processing-cost/value-added test, based on a percentage of total value, will inevitably make insular assemblers and producers captives of the vagaries of international inflation and fluctuations in foreign exchange rates. In recent years, the costs of watch parts made in western Europe have skyrocketed as inflation has spread throughout much of the European community and the value of the dollar has plummeted in relation to the Swiss franc, German deutchmark and French franc. Under the Administration proposal, the direct-processing-cost/value-added requirement would have skyrocketed as well since it is in effect tied to such international economic indicators. No business can operate successfully in such double jeopardy where it must anticipate both variable cost factors and changing value-added criteria.

The AWA, obviously, is opposed to the direct-processing-cost/value-added test for watches and watch movements. On the other hand, we have proposed and supported a minimum labor test to determine eligibility for duty-free tariff treatment. The Association backed a 26-parts test in legislation (H.R. 8222) that passed in the House during the 95th Congress. Moreover, we have backed strong minimum assembly standards for the Commerce and Interior Departments rules which administer the annual watch quota program under General Headnote 3(a). The AWA-supported, minimum labor standard encourages increased insular production and employment without the risk of injury to high-labor assemblers.

It is our understanding that the Special Import Programs Staff at Commerce, which administers the General Headnote 3(a) watch quota program, supports retention of the 70-30 foreign content test in its present form for watches and watch movements. The AWA agrees with that assessment and urges the members of the Ways and Means Subcommittee on Trade to specifically bar application of the Administration's proposed direct-processing-cost/value-added test to watches and watch movements.

I wish to express my appreciation for the opportunity to comment on H.R. 4006 and other proposals to amend the General Headnote 3(a) program.

Respectfully submitted.

BERTRAM S. LOWE, *President.*

NORTHERN TEXTILE ASSOCIATION,
Boston, Mass., March 25, 1980.

HON. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Northern Textile Association wishes to record its strong opposition to H.R. 4006 which would amend the Tariff Schedules of the United States so as to further relax the duty-free treatment rules by which foreign imports are entered into the U.S. after shipment and "processing" via the Virgin Islands or other insular possessions.

The Northern Textile Association is an association of textile manufacturers located primarily in the Northeast. Most members are small and medium-sized companies which manufacture broad-woven cotton-synthetic and wool fabrics as well as felt and elastic fabrics.

For many years the wool sector of the mainland textile industry has struggled with the disruptive effects of imports of woolen fabrics made in Italy and Romania which were then "shower proofed" in the Virgin Islands and sent to the mainland duty free. Little value or labor is added by this process. The proposed legislation, H.R. 4006, would open the door even wider. Fabrics containing up to 70 percent foreign value would be permitted duty free status instead of those with 50 percent foreign value and thereby stimulate a greater flow of foreign textiles into our market. This would not only increase the market disruption for the types of woolen fabrics which are imported, but would also be an incentive for operators in the Virgin Islands to import a wider range of textile fabrics and products for shipment to the mainland.

Some of our manufacturers have visited the installations in St. Thomas which purport to shower proof these fabrics. Shower proofing is a minor operation which, at most, amounts to an additional cost of about 5 percent. In American mills the fabrics are sold generally with or without shower proofing at the same price. No substantial transformation or change is made in the cloth. This kind of processing in the Virgin Islands is a subterfuge of minimal value. The only thing substantial in the transaction is the profit.

The first to be hurt by H.R. 4006 would be the mainland wool textile sector. This part of our industry has experienced a significant and steady decline. Production has dropped from 280 million square yards in 1970 to an estimated 164 million square yards in 1979. At the same time employment in the U.S. wool broadwoven textile industry has declined from 38,200 in 1970 to 21,000 in 1979. This has been caused by a number of factors including competition from man-made fibers, but also by the impact of regular imports of woolens and worsteds in the form of fabrics and apparel from Korea, Japan, Hong Kong and other Far Eastern sources, as well as Colombia and Uruguay. Imports of wool cloth and apparel in 1978 equal 39.8 percent of domestic apparel wool fabric production. This is a deep penetration and is up from 27.6 percent in 1970.

H.R. 4006 purports to place a $25,000,000 limit on such imports annually with an escalator geared to the GNP. This is no limitation at all: first, because the quantity is so large; and second, because it applies to each article or product. Under the Tariff Schedules of the United States there are literally hundreds of separate textile articles, and in woven wool fabrics alone there are 18 separate TSUS products or articles listed. In other words, there is no practical limit at all.

The cost in jobs and investment in the mainland industry is high while the benefit to the Virgin Islands is minimal. Even when the largest volume of foreign fabrics was being processed in the Virgin Islands, it involved less than 90 part-time jobs. On the other hand, it displaced cloth production in the United States which would have employed many hundreds of workers in the spinning, weaving and finishing of fabrics.

With a national recession advancing upon us, this is a particularly inappropriate time to encourage duty free imports and their disruptive effects upon the mainland industry. The benefit to the Virgin Islands and other insular possessions in terms of employment would be minimal, whereas the loss of textile employment in mainand mills would be substantial. The duty free importation of textile products of low wage foreign countries through the Virgin Islands would be the most costly form of Federal assistance because the major benefits go to low wage foreign textile producers.

If Congress wishes to subsidize the insular possessions, it should do so directly or at least elect other avenues which will not damage a mainland industry such

as textiles. If the Subcommittee decides to approve H.R. 4006, we respectfully urge that textile and apparel products, which were declared by Congress to be "import sensitive" in the Trade Act of 1974, be exempted from the provisions of the bill.

We request that this letter be included as part of the hearing record on this legislation.

Sincerely,

KARL SPILHAUS,
Executive Vice President.

STATEMENT ON BEHALF OF VISTA LABORATORIES, INC., OF ST. CROIX, U.S. VIRGIN ISLANDS

SUMMARY

This statement is submitted on behalf of Vista Laboratories, Inc., of St. Croix, Virgin Islands in support of H.R. 4006, pertaining to articles produced in the insular possessions of the United States.

In summary, this statement indicates that Vista Laboratories, Inc., cannot economically continue its present chemical-manufacturing operations under the Virgin Islands without the benefit of the amendment to General Headnote 3(a) of the Tariff Schedules of the United States provided for in H.R. 4006; and if the bill is enacted into law, the company anticipates that its present operations can continue and even be substantially expanded.

STATEMENT

On behalf of our client, Vista Laboratories, Inc., of St. Croix, Virgin Islands, we wish to support passage of H.R. 4006, the subject of hearings before the Subcommittee on Trade on March 17, 1980.

H.R. 4006 would raise, on a temporary basis, the allowable foreign material content for products of insular possessions under General Headnote 3(a) of the Tariff Schedules of the United States to 70 percent of the appraised value, subject to appropriate quantitative restrictions patterned after the present Generalized System of Preferences; in addition, the bill provides that insular possession articles determined by the President to be "import sensitive" would become dutiable as if produced elsewhere than in an insular possession.

Vista has produced chemical products in its plant in St. Croix since 1963. In recent years the company has specialized in benzenoid products of the types specified in Schedule 4, Part 1, Tariff Schedules of the United States, and more specifically, those benzenoid products subject to valuation under the "American Selling Price Provisions" of sections 402 and 402a of the Tariff Act of 1930 as amended by the Customs Simplification Act of 1956 (19 U.S.C. 1401a and 1402).

Recently, changing market conditions have lowered the "American Selling Price" valuation placed upon Vista's shipments of certain benzenoid products to the United States mainland, thus making it impossible for Vista's shipments to qualify under the 50 percent foreign material content presently specified in General Headnote 3(a) of the Tariff Schedules. In addition, by virtue of Title II of the Trade Agreements Act of 1979 (Public Law 96-39, 96th Congress), "American Selling Price" valuation is repealed entirely, with a potential effective date as early as July 1, 1980. This technical change in the law will greatly reduce the Custom valuation placed on Vista's products and will serve as an additional incentive to the company's use of the present duty-free provisions of General Headnote 3(a).

Because of these changes in market conditions and governing law, it would be impossible for Vista to continue to receive the benefit of duty-free treatment on its Virgin Islands production under General Headnote 3(a), and hence in the absence of legislative relief, Vista would in all probability be forced to shut down its plant in St. Croix. This would result in substantial economic loss to the economy of the Virgin Islands. Vista presently employs 12 full-time employees in St. Croix with an annual payroll of approximately $125,000, and other operating expenses for the plant approximate $180,000 per year. The company also incurs hotel bills of approximately $10,000 per year to accommodate management executives located on the mainland who regularly visit the plant.

If the economy of the Virgin Islands is to continue to develop, the duty-free provisions of General Headnote 3(a) should be expanded and modernized to

accommodate changing market conditions and changes in the law. We doubt that a side-effect of Title II of the Trade Agreements Act of 1979 of terminating operations such as Vista's was foreseen by the Congress at the time of passage, and legislative relief appears clearly appropriate.

Passage of H.R. 4006 will greatly assist Vista in its endeavor to maintain its operations in the islands on a profitable basis. We are advised by Vista that the liberalized provisions of H.R. 4006 would, even enable the company to consider expansion of its plant and its product line with a possible 50 percent increase in local personnel. We therefore urge favorable consideration of the bill by the Subcommittee on Trade and the full Committee on Ways and Means.

H.R. 4248

To amend section 8e of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, to provide that when papayas produced in the United States are made subject to any regulation with respect to grade, size, quality, or maturity, imported papayas shall be made subject to the same regulation.

DEPARTMENT OF AGRICULTURE

This is in response to your request of June 15, 1979, for a report on H.R. 4248, a bill to amend Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, to make its provisions applicable to imported papayas.

The amendment of Section 8e to include papayas would provide that whenever grade, size, quality, or maturity regulations are in effect under the marketing order regulating papayas produced in Hawaii, the same or comparable limitations would apply to imported papayas. We believe that the principle of equivalent restrictions for domestic and imported commodities is basically sound. However, inclusion under Section 8e should be limited to commodities for which low quality imports pose a threat to regulated domestic commodities. We do not now have evidence that this is the case with respect to papayas. The Department does not support the enactment of this bill.

Production of papayas in Hawaii trended upward at a moderate rate during the 1960's, but by 1970 consumption of fresh papayas in the islands, the main outlet, had approached the saturation point. The industry was seeking means of expanding out-of-State markets. To achieve the orderly marketing conditions necessary for further growth, Marketing Order 928 was placed in effect in 1971. Grade and size requirements, the principal regulatory features of the order, have been in effect continuously since its inception. The order also contains authority to regulate quality, maturity, and pack. Marketing research and development projects, including paid advertising, and production research are also authorized.

Since the inception of the order papaya production has expanded rapidly, moving from around 20 million pounds in 1971 to 40 million by 1975 and 64 million in 1978. Most of the increased volume is accounted for by fresh sales to destinations outside of the State. Shipments to U.S. mainland markets increased from 10 million pounds in 1971 to 33–36 million the past two years and foreign movement from a negligible level to 7 million pounds in 1978. Improved demand since the order has been in effect has resulted in a three fold increase in farm value of Hawaiian papayas.

United States imports of fresh papayas have moved irregularly upward, ranging in recent past years from 1.2 million pounds in 1972 to less than 300,000 pounds in 1974. During calendar year 1978 fresh papaya imports increased to a new peak of 1,471,000 pounds. However, this was only about 4 percent of the total volume on the U.S. mainland market. Mexico is now the principal supplier of fresh papayas imported into the United States, accounting for 94 percent of the total in 1978. In the early 1970's the Dominican Republic was the major source, but the balance shifted to Mexico in 1974. U.S. imports of fresh papayas are subject to the requirements of the Plant Quarantine Act.

Supplies of fresh imported papayas have not been considered by the Papaya Administrative Committee, the local body administering the marketing order, to have a significant effect on mainland sales of Hawaiian papayas. Solo is the predominant papaya variety grown commercially in Hawaii. The breeding of improved strains has been directed mainly toward developing varieties suitable for fresh use. The fresh fruit market prefers papayas from 16 to 25 ounces and virtually all shipped out of State are under 2 pounds in weight. In contrast, most of the fresh papayas imported into the U.S. are large fruited types which weigh

from 2 to 10 pounds each and are thus differentiated from Hawaiian papayas shipped to mainland markets.

Additional costs to the Department resulting from the enactment of the proposed legislation would be absorbed within existing expenditures for marketing order programs.

Enactment of H.R. 4248 would have no impact on the environment.

The Office of Management and Budget advises that it has no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

H.R. 5047

To provide for the temporary suspension of duty on the importation of color couplers and coupler intermediates used in the manufacture of photographic sensitized material (provided for in items 405.20 and 403.60, respectively).

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 5047, if enacted, would amend the Appendix to the Tariff Schedules of the United States (TSUS) to provide for a temporary suspension of the column 1 duty on color couplers and color intermediates used in the manufacture of photographic sensitized material. The column 2 duty would remain unchanged. This legislation would, in effect, continue the present duty-free entry afforded this merchandise under items 907.10 and 907.12 of the Appendix to the TSUS.

TSUS items 907.10 and 907.12 became effective December 12, 1977 and will terminate on June 30, 1980. This legislation extends the duty-free privilege through June 30, 1982.

DESCRIPTION AND USES

Color intermediates are organic chemical compounds which are used in the production of color couplers. A color coupler is a more advanced organic compound which is incorporated in photographically sensitized material and which reacts chemically with oxidized color developers to form a dye. Color couplers are used to make color photographic paper, film and graphic arts materials.

TARIFF TREATMENT

Color intermediates are classified in TSUS item 403.60[1] with a column 1 rate of 1.7 cents per pound plus 12.5 percent ad valorem, and a column 2 rate of 7 cents per pound plus 40 percent ad valorem.

Color couplers are classified in TSUS item 405.20 (photographic chemicals) with a column 1 rate of 3 cents per pound plus 19 percent ad valorem, and a column 2 rate of 7 cents per pound plus 45 percent ad valorem.

As previously indicated, the column 1 rate of duty for color intermediates (provided for in item 403.60) and color couplers (provided for in item 405.20) has been suspended since December 12, 1977 by items 907.10 and 907.12 of the Appendix to the TSUS and this suspension will continue until June 30, 1980.

Color couplers provided for in item 405.20 are also eligible for duty-free treatment under the Generalized System of Preferences (GSP); color intermediates provided for in item 403.60 are not eligible for such duty-free treatment.

Color intermediates and color couplers, along with all other products provided for in part 1 of schedule 4 of the TSUS are subject to appraisement on the basis of the American Selling Price[2] of any similar competitive article produced in the United States.[3] It is noted, however that on January 1, 1981 (or possibly on July 1, 1980), the American Selling Price basis of valuation is expected to be eliminated from U.S. law and merchandise will be appraised under the new international code of customs valuation (See Title II of the Trade Agreements Act of 1979).

DOMESTIC INDUSTRY

Color intermediates and color couplers are produced in the United States principally by Eastman Kodak. All color intermediates and color couplers produced by Eastman Kodak are used in the captive production of photographic color print paper. In early 1978, GAF stopped producing these chemicals for

[1] This TSUS item is a residual category encompassing "other" cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure.
[2] As defined in section 402 or 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and 1402).
[3] Headnote 4, part 1, schedule 4, TSUS.

their captive consumption because of strong domestic competition in the U.S. color print paper market. 3M produces color print paper, but must import color intermediates and color couplers from their Italian and English subsidiaries.

For the past few years 3M has been producing color couplers in the United States from imported color intermediates resulting in a reduction, in part, of their requirements for imported color couplers. This trend in domestic production is expected to continue until 1982 when 3M's new fully-integrated plant in Rochester, N.Y., which will produce both of these chemical products, comes on stream.

PRODUCTION

Data are not available on the total U.S. production of color intermediates and color coupler.

IMPORTS

Import statistics on color intermediates and color couplers are not separately maintained. Data on imports of color couplers in the following table are based on an analysis of TSUS item 405.20 (photographic chemicals) for the years 1974–78.

IMPORTS OF COLOR COUPLERS, 1974–78[1]

Year	Quantity (pounds)	Value
1974	40,000	$2,000,000
1975	32,000	3,500,000
1976	25,000	3,125,000
1977	15,000	2,250,000
1978	10,000	2,000,000

[1] Estimates based on official statistics of the Department of Commerce.

A representative of 3M has stated that over the past few years 3M has been importing larger quantities of the less expensive color intermediates and reducing imports of the more costly color couplers.

Virtually all imports of color intermediates and color couplers are believed to be accounted for by 3M's shipments from its Italian and English subsidiaries.

U.S. CONSUMPTION

Consumption data on color intermediates and color couplers are not available. Photo-sensitive color print paper production determines the quantities of these chemicals which are consumed in the United States. Sales of color print paper have increased dramatically in recent years to about $319 million annually in 1980. Consumption of color couplers and color intermediates probably has increased similarly.

POTENTIAL LOSS OF REVENUE

Based on 1979 data obtained from 3M, the potential loss of revenue resulting from enactment of this legislation would probably be about $600,000.

TECHNICAL COMMENTS

The language of the proposed legislation is phrased in terms of the addition of two new items to the Appendix to the TSUS. This is unnecessary since, we believe, the author's intent can be carried out by amending the expiration date of the two Appendix items which now cover this merchandise, i.e., items 907.10 and 907.12.

We note that "intermediates", as used in proposed item 913.10, is ambiguous in that it does not have a precise meaning in terms of the TSUS. The description—Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure (provided for in item 403.60, part 1B schedule 4) to be used in the manufacture of photographic color couplers—contained in current Appendix item 907.10 is intended to specifically define the intermediates covered by proposed item 913.10.

We also note that the phrase "used in the manufacture of photographic sensitized material" in proposed item 913.10 replaces the phrase "to be used in the

manufacture of photographic color couplers" in Appendix item 907.10. The phrase in proposed item 913.10 is not precisely correct since "color intermediates", rather than being used directly in the manufacture of photographic sensitized material, are actually used in the production of photographic color couplers which are, in turn, used to produce photographic sensitized material.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 5047, a bill "To provide for the temporary suspension of duty on the importation of color couplers and coupler intermediates used in the manufacture of photographic sensitized materials".

If enacted, H.R. 5047 would amend the Tariff Schedules of the United States (TSUS) to continue for an additional two years the existing temporary duty suspension of column-1, most-favored-nation, rates of duty on color couplers and coupler intermediates. In the absence of duty suspension legislation, color couplers would be dutiable under TSUS item 405.20 at the column-1 rate of 3 cents per pound plus 19 percent ad valorem. Coupler intermediates would be dutiable under TSUS item 408.60 at the column-1 rate of 1.7 cents per pound plus 12.5 percent ad valorem. The column-2, statutory, rate of duty, applicable to imports from all communist countries except Poland, Yugoslavia, Romania, Hungary and the Peoples Republic of China, would not be affected by the bill.

The Department of Commerce does not oppose enactment of H.R. 5047 since there is currently insufficient domestic production to meet domestic demand, and duty-free entry would help to control the production costs of those manufacturers that must import this material to meet their needs.

Color couplers and coupler intermediates are used in the manufacture of photographic film. All current U.S. production is consumed captively by the firms producing the materials. Thus any consumer firm which does not possess the capability to produce its own color couplers or coupler intermediates must import its needs.

Furthermore, the temporary duty suspension will relieve the burden of duty from a U.S. firm currently accounting for a large share of imports of these materials during a period while it is constructing a plant to produce these materials domestically.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 5047, a bill providing for duty free entry of certain organic chemicals (color couplers and coupler intermediates). We understand such chemicals are used in the production of photographic paper, film and graphic arts materials.

The Department of State has no objection to enactment of the proposed legislation. We understand that domestic production of the chemicals of interest is for proprietary use and that requirements for other uses are met by imports.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF LABOR

This is in response to your request for the views of the Department of Labor on H.R. 5047, a bill "[t]o provide for the temporary suspension of duty on the importation of color couplers and coupler intermediates used in the manufacture of photographic sensitized material (provided for in items 405.20 and 408.60, respectively)."

The Department of Labor does not object to the enactment of this bill.

Domestic production of color couplers and coupler intermediates is nearly all for proprietary use while other demand must be supplied through imports. The domestic employment and production of one manufacturer of photographic sensitized material is dependent upon these imported chemicals, and the high rate of duty thereon results in a product which is less competitive with imports.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

STATEMENT ON BEHALF OF THE BIDDLE SAWYER CORP.

SUMMARY OF STATEMENT

This statement is submitted on behalf of Biddle Sawyer Corp., 2 Penn Plaza, New York, New York in support of H.R. 5047.

In summary this statement indicates that Biddle Sawyer Corp., an importer of the products covered by H.R. 5047, supports passage of the bill because of the lack of domestic production of the items in question and the inflationary impact that the termination of duty-free treatment would entail.

STATEMENT

This statement is submitted on behalf of our client, Biddle Sawyer Corp., of 2 Penn Plaza, New York, New York, in support of H.R. 5047, which will continue the present duty-free treatment afforded certain color couplers and coupler intermediates provided for in Items 907.10 and 907.12 of the Appendix to the Tariff Schedules of the United States.

Biddle Sawyer is not a user of these items, but instead imports for resale to industrial users. Biddle Sawyer's customers presently rely on offshore sourcing for these items and would find it difficult under present market conditions to replace their current offshore sourcing with adequate domestic sourcing. The rate of duty on the items provided for in TSUS Item 403.60 (duty-free Item 907.10) is 1.7 cent per lb. plus 12.5 percent ad valorem. The rate of duty for items covered in TSUS Item 405.20 (duty-free Item 907.12) is 3 cent per lb. plus 19 percent ad valorem. In the event that the duty suspension expired on June 30, 1980, Biddle Sawyer would have no alternative but to pass along the increased duties in the form of higher prices to its customers. The company wishes to avoid having to take this step in view of the inflationary effect of being forced to increase prices to its customers approximately 13 percent over present prices to cover the increased duties.

On behalf of our client we urge that the Subcommittee on Trade and the full Committee on Ways and Means report favorably on H.R. 5047.

H.R. 5065

For the relief of the Chinese Cultural and Community Center of Philadelphia, Pennsylvania.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

This legislation, if enacted, would direct the Secretary of the Treasury to admit free of duty certain tiles purchased by the Chinese Cultural and Community Center for the renovation of the Center's Chinese tile roof. These roofing tiles were purchased from the China National Arts and Crafts Import and Export Corporation of the People's Republic of China.

DESCRIPTION AND USES

Ceramic roofing tiles are flat or curved pieces of fired clay used as a roof covering. They may be made in numerous colors and shapes, seldom need replacement, and require little maintenance; but they are expensive in comparison to other roof coverings.

TARIFF TREATMENT

Ceramic roofing tiles are classified in the Tariff Schedules of the United States (TSUS) item 532.31 [Ceramic tiles, other than floor and wall tiles, including roofing tiles]. Imports under this provision consist entirely of ceramic roofing tiles. Item 532.31 is dutiable at a column 1 rate of 13.5 percent ad valorem [1] and a column 2 rate of 55 percent ad valorem. These articles have been designated eligible for duty-free treatment under the Generalized System of Preferences (GSP) for imports from beneficiary developing countries. The Chinese Cultural and Community Center has stated that these ceramic roofing tiles were produced in the People's Republic of China and are therefore dutiable at the column 2 rate of 55 percent ad valorem.[2]

STRUCTURE OF THE DOMESTIC INDUSTRY

There are seven companies operating a total of nine plants in the U.S. ceramic roofing tile industry. Only two of the plants are located outside of California.

DOMESTIC PRODUCTION

Statistics for domestic production are not reported separately, but annual domestic shipments are currently estimated at 26.0 million square feet valued at $26.0 million. Although the domestic ceramic roofing tile industry could probably produce the desired tiles (one company does produce traditional Japanese ceramic roofing tile), the loss of a single sale valued at $17,000 is not expected to have any effect on a domestic industry with annual shipments valued at $26 million.

IMPORTS

Annual U.S. imports of ceramic roofing tile increased steadily during 1974–78 from 1.4 million square feet valued at $0.5 million in 1974, to 5.6 million square feet valued at $1.3 million in 1978. These figures represent increases of 300 percent in quantity and 160 percent in value. Most of this increase can be accounted

[1] The MTN Schedule XX tariff concession rate will remain unchanged at present; however, further concessions may be granted upon completion of a trade agreement between the United States and Mexico which is currently under negotiation.

[2] The President is understood to be drafting legislation to extend most favored nation (MFN) status to the People's Republic of China. If this legislation is enacted and MFN status is extended to the People's Republic of China, the column 1 rate of duty will apply.

for by imports benefiting from duty-free status under the GSP. U.S. imports of ceramic tile from Mexico, which are eligible for GSP treatment, increased from 0.3 million square feet in 1974 to 3.4 million square feet in 1978.

APPARENT U.S. CONSUMPTION

Since U.S. exports are believed to be negligible, apparent annual domestic consumption is estimated to have increased from 27.4 million square feet valued at $17.4 million in 1974, to 31.6 million square feet valued at $27.8 million in 1978. These figures represent increases of 15 percent in quantity and 60 percent in value.

POTENTIAL LOSS OF REVENUE

The proposed legislation would result in a one-time loss of customs revenue of $9,350,[3] based upon the Chinese Cultural and Community Center's estimate that these ceramic roofing tile imports are valued at $17,000.

TECHNICAL COMMENTS

It is suggested that section 2 of the bill be modified to read as follows:

Strike out Section 2 and insert a revised Section 2 in lieu thereof:

SEC. 2. If the liquidation of the entry for consumption of any article subject to the provisions of the first section of this Act has become final, such entry shall be reliquidated within ninety days after the date of enactment of this Act, and the appropriate refund of duty shall be made notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in reference to H.R. 5065, a bill "For the relief of the Chinese Cultural and Community Center, Philadelphia, Pennsylvania". The Office of the United States Trade Representative has no objection to the passage of this legislation.

The quantity of roofing tile ordered to repair the roof of the Chinese Cultural and Community Center in Philadelphia, Pennsylvania, is small, and because of this, the domestic industry is not opposed to the admission of the tile duty free. The value of the roofing tiles is $11,790, but because the People's Republic of China is subject to a duty rate of 13.5 percent, the duty would amount to approximately $1,800.

The Office of Management and Budget has no objection to the presentation of this opinion from the point of view of the Administration's position.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State regarding H.R. 5065, a bill providing for the duty free entry for certain roofing tiles for installation at the Chinese Cultural and Community Center, Philadelphia, Pennsylvania.

We consider the proposed relief to be of primary interest to other executive agencies and accordingly defer to their views.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

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[3] If the People's Republic of China is granted MFN status, this amount would be reduced to $2,295 based upon imports valued at $17,000 dutiable at 13.5 percent ad valorem.

H.R. 5147

To change the tariff treatment of parts used for the manufacture or repair of certain pistols and revolvers.

STATEMENT OF THE GUN OWNERS OF AMERICA, LAWRENCE D. PRATT

The effort to keep the 21 percent tariff on imported handgun parts its nothing more than back door gun control.

Clearly, the mood of Congress is to remove the onerous burdens placed on law-abiding gun owners by federal legislation. H.R. 5147 represents an effort to reverse this positive development.

Restricting or banning handguns is not a solution to our country's crime problem. Cities with harsh laws restricting legitimate gun ownership tend to have higher criminal use of guns that cities with more permissive laws. Clearly there is no correlation between legal availability of guns and the rate of crime.

The problem, rather, is with laws that are soft on violent criminals as well as judges who are softer still. For example, New York City authorities almost released Son of Sam on his own recognizance because he had no prior criminal record. Only a last-minute recognition of the political firestorm this well-publicized episode would have generated caused a reversal of the business-as-usual policy of pampering murders and other violent felons.

To place a discriminatory tariff on importing handgun parts will only benefit domestic manufacturers. Legitimate gun owners will be forced to continue paying higher prices. And nothing will be done about laws and judges who are the real problem.

Gun Owners of America requests that the House Committee on Ways and Means reject the tariff and treat gun owners as legitimate consumers, which they are.

H.R. 5242

To amend the Tariff Schedules of the United States with respect to the rates and duties for montan wax.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 5242, if enacted, would amend the Tariff Schedules of the United States (TSUS) by deleting current item 494.20, which provides for duty-free treatment of imports of montan wax from all countries, and substituting new items 494.19 and 419.21 in lieu thereof. Proposed item 494.19 would cover unrefined montan wax and provides for a column 1 duty rate of Free and a column 2 rate of 11 cents per pound.[1] Proposed item 419.21 would cover all other (i.e., refined) montan wax, which would be duty-free in both column 1 and column 2. Thus, the effect of H.R. 5242 would be to increase the column 2 rate of duty for unrefined montan wax from free to 11 cents per pound while maintaining the existing duty-free treatment for unrefined montan wax from column 1 countries and for refined montan wax from all sources.

The purpose of the bill is to provide import protection to the sole domestic producer of unrefined montan wax. The U.S. producer alleges that because of increasing energy costs and other considerations, he is unable to compete with the lower prices offered by the U.S. importer of East German montan wax, despite the fact that the U.S. product is acknowledged to be of superior quality. The 11 cents-per-pound column 2 duty is intended to close gap between domestic and imported prices of unrefined montan wax.

DESCRIPTION AND USES

Unrefined montan wax is a chemically complex bituminous (mineral) wax, structurally similar to many other natural waxes. It is readily extracted by means of a petrochemical solvent from lignites (soft, brown coals) and has a resinous content which varies in relation to its geographical origin.

Unrefined montan wax is used as body in the ink of "one-time" carbon paper; this use accounts for the bulk of U.S. consumption. A blend of refined paraffin and refined montan waxes is currently in use on an experimental basis to impregnate concrete on bridge surfaces, thereby protecting the underlying members and minimizing deterioration. The estimated potential market for unrefined montan wax in this application is 1 million pounds a year. Other uses include shoe, floor, automobile, and furniture polishes. To a lesser degree, both crude montan wax and refined grades are used in the following industries: explosives, wire coatings, dielectric products, plastics, and cosmetics. Certain domestically produced petroleum and vegetable waxes presently compete with montan wax in some uses. The level of competition depends, in part, on the price relationship between montan wax and these other waxes. Thus, price changes could result in changes in demand for montan wax.

TARIFF TREATMENT

Montan wax, whether or not refined, is currently classified in TSUS item 494.20. Imports of all montan wax, both crude and refined, are duty free and, therefore, not subject to the Generalized System of Preferences (GSP).

Duty-free status for all montan wax was provided in the Tariff Act of 1930, as originally enacted, and in the TSUS effective August 31, 1963.

U.S. PRODUCTION AND CONSUMPTION

The sole U.S. producer of unrefined montan wax is American Lignite Products Co. (ALPCO), at Ione, Calif. Unrefined montan wax is ALPCO's only product.

[1] The column 2 rates of duty apply to the products of those Communist countries designated in General Headnote 3(f) of the TSUS. The column 1 rates apply to the products of all other countries.

The company recently completed development of an experimental pilot plant which is more efficient in terms of energy consumption and product output. The new plant increased ALPCO's production capacity by 25 percent to approximately 5.0 million pounds a year, according to the company president.

Annual production of unrefined montan wax declined from 4.1 million pounds in 1974 to 3.2 million pounds in 1975, but rebounded to 3.9 million pounds in 1977 and 3.7 million in 1978. Production in 1979 was 3.9 million. Exports have generally accounted for about one-fourth of production.

Apparent domestic consumption of unrefined montan wax decreased from 9.3 million pounds in 1974 to 4.5 million pounds in 1977, and then rose to 6.3 million pounds in 1978. The share of consumption supplied by imports declined from about 67 percent in 1974 to about 34 percent in 1977, and then rose to about 53 percent in 1978.

There is no known U.S. production of refined montan wax. Therefore, imports, which were about 750,000 pounds in 1978 and about 1 million pounds during January-September 1979, supply all the U.S. demand.

U.S. IMPORTS

Imports classified under item 494.20 as montan wax, including both refined and unrefined, during 1974–78 and January-September 1979 were as follows:

Period	Quantity (pounds)	Value
1974	8,080,506	$1,934,451
1975	5,009,630	1,603,115
1976	4,921,936	1,765,838
1977	4,315,190	1,357,967
1978	4,088,003	1,357,861
1979 (January–September)	4,022,841	1,075,799

U.S. Department of Commerce data indicate that imports of montan wax entered under this item in January–September 1979 originated from the following sources:[2]

Source	Quantity (pounds)	Value
Canada	84,215	$20,888
West Germany	1,044,449	280,439
East Germany	2,894,177	774,472

The sole U.S. importer of unrefined montan wax is Strohmeyer & Arpe Co., Inc., Millburn, N.J. The principal importer of refined montan wax is American Hoechst Corp., Sommerville, N.J. American Hoechst is the U.S. subsidiary of a major West German producer of refined montan wax. Because of the limited number of importers of unrefined and refined montan wax, some are concerned that the separate breakouts provided for in H.R. 5242 would disclose business-confidential details of their importing operations.

TECHNICAL COMMENTS

It appears that the phrase "rates and duties" in the title of the bill was intended to read "rates of duty". It is also noted that the "Units of Quantity" column in the TSUS is included for statistical purposes only and is not part of the legal text.[3] Changes thereto are made pursuant to section 484(e) of the Tariff

[1] The inclusion of Canadian imports is acknowledged by Census as a misclassification, since Canada does not produce unrefined or refined montan wax. In this regard, C.I.E. Statistical Circular No. 151, July 20, 1978 stated: "Preliminary investigation of previous years' statistics had identified countries of origin other than the known countries of origin for imports of montan wax. There are only three known areas in the world containing deposits of lignite coal which include montan wax. The two major areas are: East Germany/Czechoslovakia and California. Normally, unrefined wax is shipped to the U.S. from East Germany; West Germany refines the montan wax and ships the refined product. A third area is Mainland China from which only one shipment has been received and from which future shipments are not anticipated."

[2] See General Statistical Headnote 2 in the Tariff Schedules of the United States Annotated.

Act of 1930 (19 U.S.C. 1484(e)) by a committee consisting of representatives of the Treasury Department, the Department of Commerce, and the U.S. International Trade Commission. It is, therefore, suggested that the unit of quantity column and the "Lb." contained therein be deleted from the bill.

In addition, it appears that the legal language proposed for these articles has been indented incorrectly. The indentation for item 494.21 ("Other") should be the same as for item 494.19 ("Unrefined").

It is suggested that the purposes of the sponsor of the legislation would be best served if the bill were to be recast by amending rate column numbered 2 of current item 494.20 by deleting "Free" and substituting "11¢ per lb." in lieu thereof thereby making all montan wax from column 2 countries dutiable at the same rate. Not only would this eliminate the need to define the distinction between montan wax that is "refined" and that which is "unrefined"[4] and the customs administrative problems incident thereto but it would also eliminate the positive incentive for producers in a column 2 country to avoid the duty on unrefined montan wax by processing the wax to obtain the duty free status for refined wax. Since the entire supply of imported unrefined montan wax is produced in East Germany, this amendment would not significantly change duty collections under the bill.

POTENTIAL GAIN IN CUSTOMS REVENUE

On the basis of 1978 imports of unrefined (crude) montan wax from column 2 sources (3,334,529 pounds), and the proposed column 2 rate of duty (11 cents per pound), we estimate that the enactment of H.R. 5242 will result in an annual increase in customs revenue of approximately $350,000.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 5242, a bill "To amend the Tariff Schedules of the United States with respect to the rates and duties for montan wax."

If enacted, H.R. 5242 would amend the Tariff Schedules of the United States (TSUS) with respect to TSUS item 494.20, montan wax. The proposed legislation would create two new tariff lines for montan wax: TSUS item number 494.19 for unrefined montan wax and 494.21 for refined montan wax. The bill would also raise the column-2 rates of duty, applicable to all communist countries except Poland, Yugoslavia, Romania, Hungary and the Peoples Republic of China, on unrefined montan wax from duty free to 11¢ per pound. The duty-free treatment of refined montan wax would remain unchanged.

The Department of Commerce opposes enactment of H.R. 5242.

The Department does not have available to it evidence that the domestic industry producing montan wax, consisting of one firm, needs relief from import competition from column-2 supplying countries. Data necessary to determine whether the increased imports from non-market economies are causing or are threatening to cause market disruption would require, the Department believes, a thorough investigation of competitive conditions in the industry.

With respect to situations in which a domestic industry believes it is experiencing injury from imports, Congress has provided administrative remedies in the Trade Act of 1974 and in other laws that permit industries, firms or groups of workers to petition for relief from imports. Section 406 of the Trade Act of 1974 addresses specifically market disruption from imports from non-market economies. The antidumping provisions of the Trade Agreements Act of 1979 address injury resulting from unfair pricing of imports. Both of these provisions involve a thorough investigation by the U.S. International Trade Commission to determine injury. We believe, either of these procedures would be the appropriate recourse for the domestic montan wax industry.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

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[4] The terms "refined" and "unrefined" are not currently defined in the TSUS.

DEPARTMENT OF STATE

The Chief Counsel of the House Ways and Means Committee requested State Department views and recommendations on proposed legislation H.R. 5242 "To amend the Tariff Schedules of the U.S. with respect to the rates and duties for montan wax."

Because of the existing remedies available to an American firm threatened by imports the Administration is opposed to the imposition of a new column 2 tariff on montan wax. If a firm is threatened with serious injury or market disruption by imports, there are legal provisions to address the problem. Section 201 of the Trade Act of 1974 allows a firm to petition for temporary import relief as a result of foreign competition. When that competition is from a Communist country a firm may also petition under section 406 of the Trade Act for a study of whether market disruption exists with respect to an article produced by a domestic industry. In either case the International Trade Commission (ITC) must promptly conduct a thorough investigation of the petition. If the ITC makes an affirmative determination under either sections 201 or 406, the President may provide for import relief. That import relief may include: (1) increases in or imposition of new tariff duties; (2) a tariff-rate quota; (3) modification or imposition of a quantitative restriction on the article in question; (4) negotiation of an orderly marketing agreement; or (5) any combination of such actions.

In addition to the protection offered by sections 201 and 406, there is in effect other legislation which specifically protects American firms against unfair trade practices such as dumping and subsidies by foreign governments. In sum we believe that U.S. law generally provides for effective relief tailored to the specific problem or need.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

DEPARTMENT OF AGRICULTURE

This is in response to your request of November 7, 1979, for this Department's views and comments on H.R. 5242, a bill "To amend the Tariff Schedules of the United States with respect to the rates and duties for montan wax."

Since the proposed bill does not directly involve matters which are the responsibility of this Department, we defer to the judgment of those agencies more directly concerned.

AMERICAN TARA CORP.,
Chamblee, Ga., March 10, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, Cannon Building, Washington, D.C.

DEAR SIR: We have been advised that a hearing has been scheduled in Washington for Monday, March 17, 1980, on HR 5242, Representative Shumway's bill to impose a duty on imported Montan Wax, amounting to $.11 per pound.

I am, once again, registering my strong objection to this Bill. I request that my objection be made part of the record for the hearing.

Very truly yours,

ROBERT J. BRIDELL,
President.

DAN T. MOORE CO.,
Cleveland, Ohio, March 10, 1980.

Hon. CHARLES A. VANIK,
Committee on Ways and Means, Washington, D.C.

DEAR CONGRESSMAN VANIK: Being a constituent from your district, I feel it is imperative that I write to you regarding the subject bill.

This bill would add approximately 20 percent to what we are currently paying for Montan Wax, most of which is imported from Europe. The beneficiary of the tariff would be a relatively low volume, high operating cost producer in California.

An additional reason why we should not have a tariff on Montan Wax is that it is a moderately good substitute for other waxes which are falling into very

short supply. Domestic refiners are running previously used wax feedstock through the gasoline refining process, producing more gasoline and light distillates.

I would like to request that this letter be made part of the record of the hearing to be held March 17.

Thank you for your attention to this matter.

Sincerely,

DAN T. MOORE, *President.*

DUPLEX PRODUCTS, INC.,
Sycamore, Ill., March 7, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR SIR: I wrote you on October 23, 1979 stating our opposition to this bill. Our opinion has not changed. We, as all other business forms producers, use sizable quantities of Montan Wax in making the carbon paper used in business forms. A duty of 11¢ per pound is an increase of 23 percent. This added cost will have to be passed on to our customers.

We do not think this is any way to fight inflation. Our government should not artificially increase raw material costs.

We oppose H.R. 5242 and ask that you vote against it. We want this letter to be part of the record of the hearing taking place March 17, 1980.

Sincerely Yours,

DAVID N. COOPER,
Director, Research & Development.

ENNIS BUSINESS FORMS, INC.,
Ennis, Tex., March 13, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR SIR: This is to register opposition to Representative Shumway's bill to impose duty on imported Montan Wax. The bill is H.R. 5242.

If this duty is imposed it will adversely affect our business by inflating costs.

I request that this letter be made a part of the records at the hearing Monday, March 17, 1980.

Sincerely,

W. D. MURFF,
General Purchasing Manager.

[Mailgram]

FRANKLIN RIBBON AND CARBON CO., INC.,
Hicksville, N.Y., March 13, 1980.

The Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR MR. CHAIRMAN: Please register our opposition to Rep. Shumway's bill H.R. 5242 scheduled for hearing March 17. This bill, if passed, would unnecessarily inflate our industry's cost on Montan wax imposing hardships within the industry. Please have this communication made part of the record of the hearing on March 17th.

BERNARD D. COYNE,
Assistant to the President.

THE KIWI POLISH CO.,
Pottstown, Pa., March 11, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee,
Committee on Ways and Means, Washington, D.C.

DEAR SIR: It is our understandng that a hearing is scheduled in Washington for Monday, March 17, 1980 on H.R. 5242. This bill is to impose a duty on imported Montan Wax.

As previously stated, we are a relatively large user of Montan Wax and are well aware that domestic sources cannot meet all the demand. The duty on imported Montan Wax would create an unreasonable imposition on its users and force prices to the consumer even higher. In these times of severe inflation this is not a practical action.

The purpose of this letter is to express our strong opposition to the passage of this bill.

We also request that this letter be made part of the record of the hearing of March 17, 1980.

Yours faithfully,

WILLIAM W. JAMISON,
Vice President, Manufacturing.

[Mailgram]

KIWI POLISH CO.,
Pottstown, Pa., March 12, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee,
Committee on Ways and Means,
Washington, D.C.:

This is in reference to H.R. 5242. The duty on imported Montan Wax as proposed is unfair throughout the whole U.S. economy. We are strongly opposed to the bill and recommend that you vote against it. Letter will follow. We request our opposition be made part of the record of the hearing of March 17,).

W. W. JAMISON,
Vice President, Manufacturing.

MOORE BUSINESS FORMS, INC.,
Honesdale, Pa., March 7, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR MR. CHAIRMAN: Please make this letter a part of the record for the March 17 hearing on House Bill 5242.

A year ago a California Congressman introduced a Bill (H.R. 13412) proposing a substantial cost increase per pound duty on imported Montan Wax which is used in most of "Moore Business Forms" regular carbon formulations. This bill was not passed.

Mr. Shumway of the 14th congressional district of California, representing Amador County California, has introduced a similar bill (H.R. 5242) but with even a greater duty cost. The bill a year ago proposed a duty charge of 6.5 cents per pound whereas this one proposes a duty of 11 cents per pound.

Montan Wax is a lignite by-product mined in only two parts of the world, East Germany, and by the American Lignite Co. in Ione, California. The Ione reserves are inadequate and of inferior grade. The California lignite contains only 5 percent wax, while the German product contains 17 percent. In addition California could not produce enough wax to accommodate us. Their share of the total market is a minority one, and should not serve to inflate costs of the majority of the U.S. Market.

Production figures are as follows:

	Pounds per year
German production	120,000,000
Alpco-Ione, Calif	3,000,000
Total world production	123,000,000
Strohmeyer U.S. sales	4,000,000
Ione U.S. sales	3,000,000
Total U.S. demand	7,000,000

Moore Business Forms, Inc., has eleven manufacturing plants in the Northeast area of the United States. These plants use 800,000 pounds of imported East German Montan Wax per year. If this bill (H.R. 5242) was to pass Congress our cost here in the East would increase $90,000 per year (11 cents per pound).

Competition is an essential ingredient in a free enterprise company. Enacting this bill would remove any incentive on the part of American Lignite Company, either to produce more, improve quality, or control costs.

Please actively oppose this bill.

R. F. KAY,
Controller.

STRAHL & PITSCH, INC.,
West Babylon, N.Y., March 7, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means,
Washington, D.C.

DEAR SIR: On October 19, 1979, we expressed our protest reference subject Congressional Bill H.R. 5242. A copy of our correspondence is attached herewith.

On November 7, 1979, you responded indicating our letter had been placed in the Subcommittee's permanent legislative file available for all Members.

At this time, we respectfully request that all correspondence in connection with this matter be entered as part of the Official Record of Hearing scheduled for March 17, 1980. Your attention and acknowledgement of this request will be appreciated.

Very truly yours,

WILLIAM P. FRANCE,
President.

STRAHL & PITSCH, INC.,
West Babylon, N.Y., October 19, 1979.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR SIR: Congressman Shumway of the 14th Congressional District of California has recently introduced subject Bill H.R. 5242. This action proposes placement of a duty of eleven cents per pound on Imported Montan Wax.

We feel this proposal to be unjustified and untimely regarding our national effort to control and minimize our inflationary economy. The resulting effect of such a duty imposition must be passed to the consumer in the form of increased prices.

We protest this action and advocate rejection of H.R. 5242.

Very truly yours,

WILLIAM P. FRANCE,
President.

TECHNICARBON, INC.,
Conyers, Ga., March 13, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR MR. VANIK: As a major manufacturer of one-time carbon paper supplied to the printing and forms industry, we would like to register again our objection to H.R. 5242, placing an 11¢ per pound duty on the importation of Montan Wax and would like this objection to be made part of the record when this bill is heard on March 17, 1980.

The imported Montan Wax plays a vital role in the formulation of our carbon inks and any increase in its price would necessitate an increase in the cost of the carbon paper manufactured. The domestic grade of Alpco Wax, produced in the 14th District of California, is also used. However, this is a separate ingredient, not interchangeable, that is used to impart characteristics of its own. An attempt to increase the cost of Montan to the level of the domestic Alpco Wax would do nothing more than increase the cost of carbon paper and add fuel to the ever-increasing inflation rate.

Virtually every company and governmental agency in the United States uses multi-part forms interleaved with one-time carbon paper. Every time a material or part is ordered by any company, carbon paper is used. Every shipping, receiving, or transfer operation from any company generates paperwork with

carbon paper. It's estimated that every car manufactured in Detroit generates over 20 lbs. of paperwork—most of it in multipart forms interleaved with carbon. Even the day-to-day use of credit cards requires carbon paper for the additional copies.

An 11 cent per pound duty would increase the cost of Montan Wax over 30 percent and force additional price increases that could hurt each and every person in the country as it adds to the spiralling inflation rate. This bill is both protectionist and beneficial for only a very small segment of society—specifically, the 14th District of California. The country, as a whole, would be better served by the defeat of this outrageously inflationary bill.

We, therefore, urge the responsible Representatives of the House Ways and Means Committee to see that H.R. 5242 is defeated.

Sincerely,

FRANK HANO, *President.*

TECHNICARBON, INC.,
Conyers, Ga., March 7, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR CONGRESSMAN VANIK: I am again writing to you opposing H.R. 5242, the bill to impose a duty of $.11 per pound on Montan wax imported into the United States.

As I outlined to you in my letter of October 23, 1979, a duty of $.11 per pound will hurt many companies and help only one company.

Again I urge you to defeat this highly inflationary bill.

Please make this letter a part of the record for the hearing on H.R. 5242.

Sincerely,

KEN KELLY,
Operations Manager.

TRANSKRIT CORP.,
Elmsford, N.Y., March 11, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR MR. VANIK: We are writing to you in connection with the above captioned bill which is scheduled for a hearing on March 17, 1980 in order to impose a duty on imported Montan Wax.

We would like to go on record as opposing this bill and we request that it be made part of the record of the hearing of March 17th.

Very truly yours,

FRANK NEUBAUER, *President.*

UARCO, INC.,
Paris, Tex., March 11, 1980.

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means,
Washington, D.C.

DEAR SIR: I would like to take this opportunity to voice our opposition to H.R. 5242, which would impose a duty on imported Montan Wax. As you are probably aware, this product is usually used in combination with petroleum products, which have already reached unreasonable price levels.

Imposing a duty on Montan Wax could not possible be of benefit to the manufactures or consumers of this product, and would only increase the spiral of inflation in our economy.

Please make this request part of the record of the hearing of March 17, 1980.

Very truly yours,

D. R. HEAD,
Purchasing Agent.

H.R. 5442

Providing for the conveyance of certain amphibious landing craft to the Coos County Sheriff's Office, Coos County, Oregon.

U.S. INTERNATIONAL TRADE COMMISSION

In your letter of March 19, 1980, you requested that we furnish a report on H.R. 5442, a bill providing for the conveyance of certain amphibious landing craft to the Coos County sheriff's office, Coos County, Oregon.

It is understood that the craft in question were seized by the U.S. Customs Service as vehicles involved in a case where drugs were smuggled into the United States from Columbia, South America. Title III of the Liquor Law Repeal and Enforcement Act (49 Stat. 879; 40 U.S.C. 304f–m) provides for the retention of forfeited property by the U.S. Government, or otherwise for disposition in accordance with the law. The U.S. Department of the Treasury apparently has primary responsibility for disposition. However there is no known provision which would enable the U.S. Government to transfer outright title to the craft to the Coos County sheriff's office. It is for this reason that special legislation is being sought to effect the conveyance of title to the sheriff's office, which apparently has a need for the landing craft.

The conveyance of title provided for by H.R. 5442 would constitute a single transaction which would have no general application to customs law or other international trade provisions and would provide no authority to effect similar transactions in the future. (The information provided this office is that the landing craft were originally surplus U.S. Army craft.)

A technical comment is offered that although the bill would appear to require the Coos County sheriff's office to pay all accumulated charges on the craft since seizure, the present language could be interpreted to apply only to unpaid expenses. Any expenses previously paid by the U.S. Government would possibly not be recoverable. It is suggested that to insure payment of all expenses, if that is the desire of the Congress, such portion of lines 8 and 9 of page 2 of the bill reading, "since the seizure of such craft and which remain outstanding upon delivery of such craft." be deleted and that "from the date of seizure of such craft to the date of delivery to the sheriff's office." be substituted.

If we can provide any other assistance in this matter, please call upon us.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of the Department of Commerce on H.R. 5442, a bill providing for the conveyance of certain amphibious landing craft to the Coos County sheriff's office, Coos County, Oregon.

H.R. 5442, if enacted, would convey to the Coos County sheriff's office all right, title, and interest of the United States to three lighter amphibious resupply cargo craft seized by the Customs Service and the sheriff's office.

The bill has no impact on U.S. trade policy. The Department of Commerce defers to the Department of the Treasury, U.S. Customs Service, regarding this bill.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to your Committee from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to respond to your letter of March 19, 1980, in which you requested the views and recommendations of the Department of State

on H.R. 5442, a bill providing for the conveyance of certain amphibious landing craft to the Coos County sheriff's office, Coos County, Oregon.

Because H.R. 5442 does not appear to have any foreign policy implications, the Department defers to the views of other agencies directly concerned.

Thank you for this opportunity to comment.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

H.R. 5452

To permit products of U.S. origin to be re-imported into the United States under informal customs' entry procedures.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE BILL

H.R. 5452, if enacted, would allow imports of merchandise of United States origin to be made by informal entry procedures if the aggregate value of the shipment does not exceed $10,000 and the merchandise is imported for repair or modification prior to reexportation.

BACKGROUND INFORMATION

Importers generally retain the services of a customhouse broker to prepare formal entries. Informal entry documents are usually completed by the importer or by a customs officer for the importer. Under existing law, however, informal entries [1] are in most instances limited to shipments the aggregate value of which does not exceed $250. Some U.S. firms have objected to the complexity, expense, and time consumed in making entry for merchandise of U.S. origin returned to this country for repair or modification and subsequent reexportation. One of these has been a domestic manufacturer of modest size not regularly carrying on an importing business but whose products when exported are required in some instances to be returned to the United States for modification or repair. Due to the high value of the individual products of this firm, the existing informal entry procedure is inapplicable.

FORMAL AND INFORMAL ENTRIES

The general requirements for making formal entries are set forth in section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), and in part 141 of the U.S. customs regulations (19 CFR 141). The entries must be prepared by an importer, or his agent, and must be accompanied by a number of documents, such as an invoice, a bill of lading, or a carrier's certificate.

At the time of entry a deposit is made of estimated duties due. In order to secure release of the mechandise from the Customs Service, the importer is required to obtain a bond, thereafter the goods must be formally appraised (the dutiable value of the merchandise ascertained) classified (the applicable free or dutiable provisions of the law determined), and finally liquidated (the amount of duty due, if any, ascertained). For statistical purposes, the formal entry must show the seven-digit Tariff Schedules of the United States Annotated (TSUSA) reporting number, the countries of origin and exportation of the merchandise, the date of exportation, the quantities, entered and transaction values, and transportation charges.

The procedure for filing informal customs entries is much simpler. The general requirements for making informal entries are provided in section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498), and in sections 143.21 through 143.28, Customs Regulations (19 CFR 143.21–28). As previously indicated, the informal entry document is usually completed by the importer (or the customs inspector for the importer) at the place where the imported merchandise is examined and released by the inspector (e.g., pier or airport terminal). Although a deposit of estimated duties due is required, there is no formal appraisement of the goods, few supporting documents are necessary, and the importer, under ordinary circumstances, is not required to obtain a bond for the release of the merchandise. Statistical data for informal entries are required only at the five-digit instead of the seven-digit level of the TSUSA.

[1] Section 498, Tariff Act of 1930, as amended (19 U.S.C. 1498).

Although legislation has been introduced previously to increase the limit of $250 for informal entries, such measures have not been enacted by the Congress. One of the concerns in increasing the value for informal entries has been with regards to the compilation of adequate trade data. At present, the Bureau of the Census compiles complete data on formal entries, however, it takes only a 1-percent sample of informal entries for the purpose of estimating the overall total value of U.S. imports. Detailed data, thus, are not routinely compiled on informal entries.

TARIFF SCHEDULE AND REGULATION PROVISIONS FOR IMPORTS OF U.S. GOODS RETURNED FOR REPAIR OR ALTERATION

Tariff Schedules of the United States (TSUS) item 800.00 provides for the free entry of "Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad." A statistical breakout under this item, TSUSA item 800.0025, provides for "Articles returned temporarily for repair, alteration, processing, or the like, the foregoing to be reexported." (Statistics, however, are not compiled for publication by the Bureau of the Census on this item.) Headnote 1, part 1A, schedule 8 of the TSUS, provides to the effect that free entry is not granted under item 800.00 if the U.S.-produced articles were originally exported with benefit of drawback or were subject to certain other restrictions.

Subsections (a), (2), (d), and (i) of section 10.1, Customs Regulations (19 CFR 10.1(a), (b), (d), and (i)), provide special instructions for making entry of merchandise under TSUS item 800.00.

TSUS item 864.05 provides for the free entry under bond of "Articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States)." This provision applies to imported articles of foreign origin. If imported articles are not claimed to be returned products of the United States, they could be eligible for free entry under bond without the necessity of establishing their identity as returned U.S. products or of providing evidence as respects drawback and internal-revenue tax.

Section 10.31, Customs Regulations, (19 CFR 10.31) sets forth the administrative requirements for entry under TSUS item 864.05, including entry for shipments valued at not more than $250.

DISCUSSION

The reason for obtaining detailed information with respect to U.S.-produced merchandise imported under TSUS item 800.00 is to protect the customs revenue; this insures that merchandise not entitled to free entry is not brought into the country without proper duty assessment. In fact, it is often quite difficult to ascertain whether a product is of U.S. or foreign manufacture by mere examination of the article. Where merchandise is manufactured in the United States for foreign consumption, the foreign recipients may actually consider identification as U.S.-made articles as undesirable—only such markings or identification as may be required by the importing country will probably be shown.

The need for positive identification of imported merchandise as being of U.S. manufacture, however, is not readily apparent where the merchandise is imported only for repair and alteration and is to be reexported. If the goods are not to become a part of the commerce of the United States in the sense of being bought and sold and used here, they would not be in competition with goods already in this country. The significance of this is especially recognized when it is realized that foreign-made merchandise can be imported free of duty under bond for repair or modification. Thus, the duty free privilege is not limited alone to U.S.-produced goods (see preceding section of this report as it refers to TSUS item 864.05.)

Too, whether or not the merchandise has been advanced in value or improved in condition while abroad appears to be of little significance since the merchandise in most instances would still be subject to free entry under bond under item 864.05. The same observation is made with respect to the question of whether drawback was paid with respect to the merchandise at the time of its first exportation from the United States. Internal-revenue taxes also appear to be in the same category. The important factor as to merchandise imported for repair

or modification appears to be one of guaranteeing that the articles do not remain in the United States free of duty without definite establishment that they are U.S. good returned.

GENERAL COMMENTS

It appears that the present tariff schedule and regulatory provisions may be too demanding with respect to the importation of U.S.-produced goods returned to this country for the express purpose of repair or alteration and subsequent reexportation.

H.R. 5452, by authorizing the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of U.S.-produced merchandise returned to this country for repair or alteration, where the value does not exceed $10,000, would possibly enable the relaxation of some of the entry requirements but would not be able to obviate certain of the statutory requirements such as pertain to drawback and internal-revenue tax.

Whether the revenues of the U.S. would still be adequately protected if the dollar value for informal entry for U.S. goods returned for repair or alteration is increased from $250 to $10,000 is not known. If the customs officers cannot be assured to their satisfaction as to a drawback and internal-revenue tax, for instance, it might still be necessary to require safeguards in the regulations to obtain the necessary information. It is further noted that section 148.22, Customs Regulations (19 CFR 148.22), now provides that the district director of the Customs Service may actually require a formal consumption or appraisement entry for any merchandise if he deems it necessary for the protection of the revenue. If there should be concern that the statistical reporting requirements would be inadequate under an informal entry procedure, provision could possibly be made therefor in the legislation.

TECHNICAL SUGGESTIONS

The statement of the purpose of the bill now uses the term "reimported". It appears that the proper term should be "imported". For the purpose of uniformity with existing tariff schedule language, it is suggested that in line 7 of the bill the language, "Merchandise, of United States origin," be deleted and that "Products of the United States" be substituted. Also, on line 10, the word "modification" should be deleted and "alteration" substituted.

ADMINISTRATIVE COSTS

It does not appear that enactment of H.R. 5452 would entail the expenditure of any additional funds by the Government.

DEPARTMENT OF COMMERCE

This is in reply to your request for the views of this Department on H.R. 5452, a bill "To permit products of United States origin to be reimported into the United States under informal customs' entry procedures."

If enacted, H.R. 5452 would amend section 498(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1498(a)) to allow merchandise, the aggregate value of which does not exceed $10,000, and which is imported for the purposes of repairs or modification prior to reexportation, to be imported under informal customs' entry procedures.

The Department of Commerce recognizes the positive contributions which this legislation offers to small and medium-sized businesses which are attempting to export and would have no problems from the standpoint of trade policy. We would defer to the U.S. Customs Service with regard to its ability to administer the provisions of H.R. 5452 and with regard to consistency of those provisions with other U.S. customs procedures.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF LABOR

This is to respond to your request for the views of the Department of Labor on H.R. 5452, a bill "[t]o permit products of United States origin to be reimported into the United States under informal customs' entry procedures.'

The Department of Labor defers to the Customs Service with regard to the enactment of this bill.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 5452, a bill dealing with the rules and regulations for the declaration and entry of merchandise.

The proposed legislation would, in effect, relieve United States firms of the obligation to comply with certain rules and regulations governing the declaration and entry of merchandise of United States origin returned for repair or modification and then reexported. The rules and regulations for the declaration and entry of merchandise are administered by the Department of the Treasury and we defer to its views regarding the proposed relief.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

STATEMENT OF HON. RICHARD T. SCHULZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

I would like to congratulate our colleague Mr. Stanton for introducing legislation which would permit domestic products to be re-imported into the United States under informal customs' entry procedures and for his leadership on this issue. I am pleased to be a co-sponsor of this legislation and urge this subcommittee to favorably report this proposal to the full ways and means committee.

At a time of rampant inflation and astronomical trade deficits, I feel it is appropriate that we amend our laws to encourage rather than discourage industries from entering the export field.

Unfortunately, the current provisions contained within sections 484 and 485 of the Tariff Act of 1930 hinder export activity by placing unnecessary delays and expense on those who find it necessary to re-import their merchandise for service or repair.

Because of the enormous workload of the customs service—and the lack of sufficient legal alternatives—customs holds virtually all shipments regardless of whether duties would be applied—until a formal application for their release has been filed and approved.

To the small domestic exporter who is committed to providing quality service to its overseas customers, this time consuming delay and expense can and does result in lost international sales—sales which certainly are reflected in our current trade imbalance which the commerce department indicates has risen to $5.5 billion in February of this year, the highest single-month deficit in our history.

While there may be little this Congress can do to readily reduce our dependence on foreign oil, a large component of our trade deficit—one direct impediment to domestic exporters who are able to competitively sell their goods abroad—can be eliminated by approving this legislation.

I believe this legislation is a more direct approach than past efforts to increase the informal entry limit of $250 and will produce the desired results of a lower trade deficit, more jobs in the export field and increased productivity in our economy.

I urge the adoption of H.R. 5452.

H.R. 5464

To amend the Tariff Act of 1930 in order to permit drawback for imported merchandise that is not used in the United States and is exported or destroyed under customs supervision.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE BILL

H.R. 5464, if enacted, would add a new subsection at the end of section 313 of the Tariff Act of 1930, as follows:

"(l) SAME CONDITION DRAWBACK.—(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

"(A) is, before the close of the three-year period beginning on the date of importation—

"(i) exported in the same condition as when imported, or

"(ii) destroyed under Customs supervision; and

"(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback.

"(2) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) with respect to imported merchandise not amounting to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B)."

Thus, this bill would provide for the allowance of a refund as drawback of 99 percent of any duties, taxes, or fees paid the Government on imported merchandise exported in the same condition as when imported, or destroyed under the supervision of the U.S. Customs Service, within 3 years of the date of importation. Refund would be made only if the merchandise was never used in the United States; incidental operations with respect to the goods (including, but not limited to, testing, cleaning, repacking, and inspecting) would not be considered a use. The refund would be possible even if the imported articles had been released from Government custody. The amendment would be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption on or after the date of enactment.

PRESENT LAW

Since they are not pertinent to the legislation under consideration, all the types of drawbacks are not set forth at this time. The usual feature of drawback under section 313 of the Tariff Act (19 U.S.C. 1313) is the refund of 99 percent of the duties paid on imported goods when such goods are used in the maintenance of products which are exported. Section 313 also permits domestic goods of the same kind and quality to be substituted for foreign goods in the exported manufactured product.

In order to obtain drawback, an application must be filed for a rate of drawback (the technical term used to describe the authorization for drawback). If the submitted statement or statements are sufficient to show that the methods and records of the manufacturer enable compliance with the law and the regulations, Customs issues a rate of drawback, a synopsis of which is published in the weekly edition of the Customs Bulletin. Payment of drawback is then made after the manufactured product is exported. Section 313(c) provides for a refund as drawback of 99 percent of the duties paid on imported merchandise exported because the goods do not conform to sample or specifications as ordered, or if shipped to the United States without the consent of the consignee.

The concept of drawback on imported merchandise used in the manufacture of domestic products for export has been in existence since the enactment of the first

tariff law in 1789. Drawback was provided to stimulate and encourage the country's infant industry by not adding to industry's costs the charge for duties on the imported goods used in the manufacturing process.

The tariff laws do allow, under certain limited circumstances, for a full refund of duties paid on imported merchandise. Included are the exportation or destruction of imported prohibited merchandise,[1] the exportation or destruction of imported goods from a customs bonded warehouse or from continuous customs custody,[2] the withdrawal of imported goods from a customs bonded warehouse or customs custody for use as supplies for vessels and aircraft or for the maintenance and repair of vessels and aircraft,[3] the destruction of imported goods entered under bond,[4] and the voluntary abandonment of goods to the Government by the importer or consignee.[5]

In customs law, unless provision is expressly made for drawback or a return of duties, taxes, or fees paid on imported articles released from Government custody, a refund of the payment to the Government is not allowed on the destruction or exportation of the imported goods. This holds true even if the importer discovers that there is little domestic demand for the imported product, that the merchandise cannot be disposed of commercially without great financial loss, and that it is desirable to return the merchandise to the foreign source or sell it in another foreign country.

COMPARISON OF PROPOSED LEGISLATION TO EXISTING DRAWBACK AND FULL REFUND PROVISIONS OF LAW

Under the usual manufacturing drawback procedure, the Government requires the manufacturer to keep extensive records. The goods must be identifiable at each stage of the manufacturing process, and segregation of merchandise may be required. However, not all such procedures will be applicable under the proposed legislation, since there will be no manufacturing operations involved and in some instances possibly no manipulation of the merchandise.[6] Nevertheless, the existing procedures would still require a continuity of identification from the date of release from customs custody to the date the goods were returned for exportation or destruction.

The amendment proposed in H.R. 5464 would allow a 3-year period for exportation or destruction. Although a 5-year period is generally allowed to claim drawback, where goods do not conform to sample or specification, or were shipped without the consent of the consignee, the period for exportation is only 90 days after the release of the goods from customs custody unless an extension is granted. The refund provision for abandonment of merchandise to the Government after the release of the goods from customs custody requires their return within 30 days. The short periods of 90 days and 30 days are intended to insure that the cost of administration, problems of identification of the goods, and the ascertainment of the exact disposition of the merchandise at each step after release from customs custody are held to a minimum. In the other instances of refunds, the requirements are generally that the goods have been in continuous customs custody, in a customs bonded warehouse, or imported under bond.

EFFECTS OF H.R. 5464, IF ENACTED INTO LAW

If the proposed legislation was only to correct an inequity in the law under which the amount paid in duties, import taxes, or fees is not refundable even though the goods are exported or destroyed, it appears there would be only a limited increase in exportations or instances of destruction. However, it may be that the new law would have a further impact. A greater ability on the part of U.S. business to obtain refunds of duties, import taxes, and fees may affect the contracts negotiated with foreign business, that is, to provide greater opportunity for the return of merchandise. The higher the duty rate and the lower the cost of freight, the greater the probability would be of importers' using this provision to return unused merchandise to its foreign source.

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[1] Sec. 558(a)(2), Tariff Act of 1930 (19 U.S.C. 1558).
[2] Sec. 557 (a) and (c), Tariff Act of 1930 (19 U.S.C. 1557).
[3] Sec. 309, Tariff Act of 1930 (19 U.S.C. 1309).
[4] Sec. 558(a)(2), Tariff Act of 1930 (19 U.S.C. 1558).
[5] Secs. 506(1) and 653(b), Tariff Act of 1930 (19 U.S.C. 1506 and 1563).
[6] Sec. 562, Tariff Act of 1930 (19 U.S.C. 1562).

It also appears that certain patterns for handling imported merchandise when it arrives in the United States may change. For instance, section 562, Tariff Act of 1930 (19 U.S.C. 1562), now provides in part for the manipulation of merchandise in bonded warehouse under customs supervision for cleaning, sorting, repacking, or other changed conditions. This language is similar to that regarding the operations which would be allowed under the new law in domestic concerns' facilities, that is, "performing incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting). . . ." If merchandise can be exported with practically full return of duties upon manipulation at a domestic concerns' facilities, it would appear that the need for customs bonded warehouse manipulation might be lessened. There might also be less need for manipulation under customs supervision.

Probably not much use would be made of the duty refund provision by exportation of perishable articles. However, if the language of H.R. 5464 was interpreted to allow drawback on deteriorating articles, many products might be exported or returned for destruction under customs supervision. Again, it does not appear that there would be much activity in the exportation of items for which freight is an important factor, such as iron and steel. However, in the electronics industries, foreign subsidiaries often find it economical to ship components or complete units to the U.S. parent firm for testing, cleaning, repacking, inspecting, or other operations not amounting to manufacture. The proposed drawback provision could very well be applied to such importations.

ADMINISTRATIVE CONSIDERATIONS

The U.S. Customs Service would be required to issue regulations to effect the application of the proposed legislation. It appears that it would be necessary to specify in part to whom refund of duties would be available, what proof would be required to establish that duties had been paid on importation, how it would be established that the merchandise was in fact exported in the same condition as when imported, subject only to "incidental" changes, and how it would be ascertained that the goods were never used in the United States. The greater the number of different transactions which had transpired concerning the particular merchandise within the 3-year period allowed for exportation or destruction, the greater would be the administrative attention required.

Although the term "used" already appears in customs legislation, its meaning may be quite critical with respect to the proposed legislation. If merchandise or representative samples have been displayed for sale, have they been "used" in the United States within the meaning of H.R. 5464? Does the extent to which the goods have entered into the commerce of the United States have a bearing on the proposed refund of duties?

Since it would not be practical to set up a system or method for following all merchandise after its release from customs custody, it appears that it would be the responsibility of the drawback claimant to establish necessary information and proof to the satisfaction of customs authorities. In order not to create an intolerable burden on the claimant, or undue expense and difficulty on the part of the Government in checking and verifying, it appears that considerable discretion would have to be granted to customs officers making a decision as to whether the claims were reasonably substantiated.

Questions are raised by the fact that the proposed legislation provides for different criteria with respect to exports and goods destroyed under customs supervision. It is provided that exported goods be in the same condition as when imported. It is not clear whether duties will be refunded as drawback on exportation if there has been a deterioration in quality by natural causes or for other reasons. Regarding goods to be destroyed, there appears to be no statutory provision for their being in the same condition as long as they have not been "used" in the United States. Thus, goods which are identifiable as imported merchandise but which have suffered considerable deterioration within 3 years by reason of chemical change, exposure to the elements, fire damage, or other reasons, might still be subject to drawback on destruction in customs custody.

TECHNICAL COMMENTS

The proposed new drawback provision should follow present subsection (i) and should be new subsection "(j)"; the existing subsections "(j)" and "(k)" should be amended by substituting therefor the letters "(k)" and "(l)", respec-

tively. Thus the provision relating to regulations and the provision for drawback with respect to duties paid into the Treasury of Puerto Rico would then properly appear after the proposed legislation of H.R. 5464, leaving no doubt as to the applicability to the new provision.

Although the title of the proposed new provision is "Same Condition Drawback", this appears to be an anomaly, since it would allow a change of condition as long as it is less than that of manufacture. Manipulation pursuant to section 562 of the Tariff Act, has been recognized in the law as a change in condition of the merchandise.

In the meaning of the language of proposed subsection (1) (2) is intended to be the same as that of section 562 of the Tariff Act where reference is made to "cleaning," "repacking," and other operations, it is suggested that, insofar as possible, identical language be adopted for both provisions. However, if the meaning of the two provisions is not intended to be comparable, it would be desirable to have as clear a differential between the language of the proposed legislation and section 562 of the Tariff Act as possible.

Section 2 of the proposed legislation provides that the Act would become effective "with respect to articles entered for consumption, or withdrawn from warehouse or a foreign trade zone for consumption, on or after the date of enactment of this Act." The status of articles in a foreign trade zone, however, is distinctly different from that of goods in a bonded warehouse, and they are not "withdrawn" within the usual meaning of that common customs term. It is the opinion that it would be proper to omit reference to the foreign trade zone in the proposed legislation. More appropriately, the pertinent language should read, "with respect to articles entered, or withdrawn from warehouse, for consumption . . . ."

"Same Condition Drawback" has been in the "idea" stage for some years. Although the refund of duties, import taxes, and fees provided for in the proposed legislation could be handled as a straightforward refund of duties without resort to "drawback," there is already precedence for this type of legislation in the drawback provision, section 313(c), pertaining to merchandise not conforming to sample or specifications, or shipped without the consent of the consignee.

ADMINISTRATIVE COSTS AND LOSS OF REVENUE

It appears that, particularly with respect to low-duty-rate items, the amount (1 percent) of the duty retained by the Government for administrative expenses might be far less than would actually be expended for administration. However, it is not possible to estimate the added administrative expense to the Government if H.R. 5464 is enacted into law. What the loss of revenue would be by reason of duty, import tax, and fee refunds is also indeterminate. At a minimum, it would amount to some tens of thousands of dollars, but could possibly extend to millions of dollars.

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in response to your request for comments on H.R. 5464, to amend the Tariff Act of 1930 in order to permit drawback for imported merchandise that is not used in the United States and is exported or destroyed under Customs supervision.

The Office of the Special Representative for Trade Negotiations defers to the opinions of other agencies, particularly the Department of the Treasury.

The Office of Management and Budget has advised that it has no objection to the presentation of these views from the viewpoint of the Administration's program.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of the Department of Commerce on H.R. 5464, a bill to amend the Tariff Act of 1930 in order to permit drawback for imported merchandise that is not used in the United States and is exported or destroyed under Customs Supervision.

If enacted, H.R. 5464 would permit recovery of 99 percent of the duties, taxes or fees on imported merchandise which is not used in the United States and,

within a three-year period beginning on the date of importation, is exported in the same condition or destroyed under Customs supervision. Further, the bill permits incidental operations, such as testing, cleaning, repacking, and inspecting, to be performed with respect to imported merchandise without loss of the drawback privilege.

The Department of Commerce supports the purpose of the bill, to include a "same condition drawback" provision in the Tariff Act of 1930. We suggest that the proposed legislation be amended as recommended by the Department of the Treasury regarding the time period for drawback and incidental operations performed on imported merchandise.

Under current U.S. law, imported goods which undergo a manufacturing process domestically and are subsequently exported, qualify for a duty drawback. The proposed legislation would give similar treatment to imported merchandise which is subjected to a manipulation process which cannot be considered manufacturing. Manipulation could consist of repackaging, quality control testing, assembly, and/or warehousing. Inclusion of a "same condition drawback" would be beneficial for U.S. exporters by allowing them to increase their capability for distribution of products to all markets, reduce transportation costs through greater use of container transport of foreign products, assure uniform testing of a company's products, increase total exports to foreign markets and have maximum flexibility with cargo in order to meet deadlines or emergency orders. The "same condition drawback" would give domestic companies more flexibility in marketing their products, would increase goodwill with foreign customers and would improve U.S. competitiveness overseas.

As to the technical amendments recommended by the Department of the Treasury reducing the time period from three years to two years and changing the language regarding incidental operations, the Department defers to the Treasury Department which will have responsibility for administering this provision.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF THE TREASURY

This is in reply to your request for the views of the Department of the Treasury concerning H.R. 5464, a bill to amend the Tariff Act of 1930 in order to permit drawback for imported merchandise that is not used in the United States and is exported or destroyed under Customs supervision.

The bill would permit a drawback of 99 percent of the duty, tax, or fee for imported merchandise under certain conditions. These conditions are that the merchandise not be used in the United States and, within a 3-year period beginning on the date of importation, the merchandise be exported in the same condition or destroyed under Customs' supervision. Further, the bill permits incidental operations, such as testing, cleaning, repacking, and inspection, to be performed with respect to imported merchandise without loss of the drawback privilege.

A "same condition drawback" provision is not currently incorporated into the Tariff Act of 1930 (19 U.S.C. 1313, 1557, and 1558) with other drawback provisions. Generally, the Department assumes that imported merchandise will be incorporated into final goods before they are exported, without loss of entitlement to drawback, when it applies current United States law and agreements.

The Department of the Treasury supports the inclusion of a "same condition drawback" provision in the Tariff Act. However, the Department recommends two amendments regarding the time period for drawback and incidental operations performed on imported merchandise.

With regard to the time period, the newly negotiated MTN Agreement on Subsidies and Countervailing Measures states that drawback for imports that are physically incorporated into an export may be allowed "if the import or export operations both occu in a reasonable time period, normally not to exceed two years." This agreement was approved by Congress in section 2 of the Trade Agreements Act of 1979 (P.L. 96-39). Although H.R. 5464 addresses a different condition of drawback, the Department believes that the time period should be uniform. Therefore, the bill should be amended by deleting "three-year" in line 4, page 2 of the bill and substituting "two-year".

With regard to incidental operations, the bill does not clearly provide that the incidental operations are to be performed on the imported merchanise itself. For example, the Department is concerned that, as drafted, the bill would be interpreted to allow the imported merchandise to be used while in the United States to test other merchandise. The Department believes that this would constitute a use of the imported merchandise prohibited by subparagraph (1) (B) of the proposed "same condition drawback" provision. Therefore, the bill should be amended by deleting "with respect to" in line 17, page 2 and substituting "on the". Further, "itself" should be inserted after "imported merchandise" in the same line.

Subject to these amendments, the Department of the Treasury supports enactment of H.R. 5464.

The Department notes that, consistent with other drawback provisions, the bill contains a 99 percent refund provision so that one percent can be retained to cover administrative expenses. However, this one percent is not adequate to cover the administrative expenses of the Customs Service to perform this function.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 5464, a bill permitting drawback on certain merchandise of foreign origin.

Section 313 of the Tariff Act of 1930 provides, in part, that upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback subject to certain limitations. The proposed legislation would, in effect, extend the drawback privilege to include articles of foreign origin exported from the United States in the same condition as imported (or destroyed under Customs supervision) provided such merchandise is not used within the United States before such exportation or destruction.

The statutory provisions governing the drawback privilege are administered by the Department of the Treasury and we defer to its views regarding the proposed relief.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF LABOR

This is to respond to your request for the views of the Department of Labor on H.R. 5464, a bill to amend the Tariff Act of 1930 in order to permit drawback for imported merchandise that is not used in the United States and is exported or destroyed under Customs supervision.

The Department of Labor defers to the Department of Treasury with regard to this proposed bill.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

FLORIDA CITRUS MUTUAL,
Lakeland, Fla., March 20, 1980.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: Florida Citrus Mutual, representing 15,271 Florida citrus growers, respectfully offers the following comments in lieu of a personal appearance before Chairman Charles A. Vanik's Subcommittee on Trade of the Ways and Means Committee hearing March 17 regarding H.R. 5464.

This bill, which would amend the Tariff Act of 1930 in the area of drawback for imported merchandise, gives us serious concern.

The amendment would remove the provision of manufacturing or modification of imported material, and thereby would remove one of the basic reasons for

drawback privileges: the creation of jobs, technology, etc. through the use of foreign materials used in U.S. exports. Additionally, this amendment would make it easier for an individual or company to overbuy product due to a poor business decision, and would remove the incentive of exporting a manufactured or modified product.

This amendment, in my opinion, would encourage imports and discourage manufactured U.S. exports made from imported material.

Therefore, we are in opposition to H.R. 5464.

We appreciate this opportunity for comments.

Sincerely,

BOBBY F. MCKOWN,
Executive Vice President.

H.R. 5827

To amend the Act of June 18, 1934, regarding the submission by the Foreign-Trade Zones Board of annual reports to Congress.

[*See* American Federation of Labor and Congress of Industrial Organizations, p. 701.]

H.R. 5829

For the relief of Foundry United Methodist Church.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 5829, if enacted, would provide for duty-free entry of six electrically operated, tuned bronze bells, manufactured in Switzerland, and imported for the use of the Foundry United Methodist Church of Washington, D.C. Section 2 of the bill would provide for a refund of any duty already paid on these six bells.

DESCRIPTION AND USES

Electrically-operated, tuned bells are customarily installed in churches. Such bells, chromatically tuned, are cast in bronze and installed in sets. They are referred to as chimes, peals, or carillons, depending on the number of bells in a set and the manner in which they are played.

U.S. TARIFF TREATMENT

A set of six cast bells imported from Switzerland would be classified under item 725.34 of the Tariff Schedules of the United States (TSUS). This item provides for sets of tuned bells known as chimes, peals, or carillons, containing not over 22 bells. In 1976, when the bells under consideration were imported and duty assessed, the applicable column 1 rate of duty was 5 percent ad valorem. As a result of the recently concluded Multilateral Trade Negotiations, the current column 1 rate of duty applicable to TSUS item 725.34 is 4.8 percent ad valorem.[1] This rate will be reduced to 3.7 percent ad valorem in eight equal stages commencing January 1, 1980, and ending January 1, 1987. The LDDC concession rate of duty is 3.7 percent ad valorem;[2] the column 2 rate of duty is 40 percent ad valorem. TSUS item 725.34 is included in the list of articles eligible for the Generalized System of Preferences (GSP).

STRUCTURE OF THE DOMESTIC INDUSTRY

Information available to the Commission indicates that there is only one U.S. firm, the McShane Bell Foundry Co., Inc., of Baltimore, Md., which casts sets of tuned bells. We are advised that the company has been in operation for 124 years. It currently employs eight persons and has the capability of producing sets of tuned bells of various sizes. In addition, the company casts single bells for a variety of uses.

DOMESTIC PRODUCTION

The McShane Bell Foundry Co. accounts for all domestic production of cast, tuned bells. Production of sets of cast, tuned bells containing no more than 22 bells was valued at $5,000 in 1978, and $36,000 in 1979. The firm's total output, including all types of cast bells, was approximately $20,000 in 1978 and approxi-

[1] We note that sec. 7 of H.R. 3122, 96th Cong., 1st sess., would eliminate permanently the duty on TSUS item 725.38 (Sets of tuned bells known as chimes, peals, or carillons containing over 34 bells.)

[2] The LDDC rates apply to the products of those "least developed developing countries" listed in General Headnote 3(d) of the TSUS.

mately $47,000 in 1979. These figures do not include the value of mountings, electrical motors and controls, or installation.

U.S. IMPORTS

The following tabulation, compiled from official statistics of the U.S. Department of Commerce, gives the value of total U.S. imports for consumption of sets of tuned bells known as chimes, peals, or carillons, for the years 1975–79:

[In thousands of dollars]

Year	Containing not over 22 bells	Containing over 22 bells	Total
1975	71	164	235
1976	267	180	447
1977	129	71	200
1978	270	341	611
1979	266	212	478

Official statistics do not specify the number of bells entering under the two categories shown above. Duty-free imports under the GSP provisions were valued at $49,000 in 1979.

U.S. EXPORTS

Exports of sets of cast, tuned bells are negligible.

APPARENT U.S. CONSUMPTION

Available information indicates that annual apparent domestic consumption of sets of tuned bells, containing no more than 22 bells, was valued at $275,000 in 1978 and $302,000 in 1979. Imports accounted for the major portion of apparent consumption.

POTENTIAL LOSS OF REVENUE

Loss of customs revenue based on the entry specified in this legislation would be approximately $2,000. This loss has been calculated on the entry dated June 10, 1976, at the then-prevailing rate of duty; i.e., 5 percent ad valorem.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 5829, a bill for the relief of the Foundry United Methodist Church.

If enacted, H.R. 5829 would authorize the Secretary of the Treasury to admit free of duty six bronze bells (including all accompanying parts and accessories) manufactured in Switzerland for the use of the Foundry United Methodist Church of Washington, D.C. The bill further provides that, if the liquidation of the entry for any of the articles has become final, such entry shall be reliquidated and the appropriate refund of duty shall be made.

The bells subject to this legislation are classified under item 725.34 of the Tariff Schedules of the United States (TSUS), and are currently dutiable at a rate of 4.8 percent ad valorem. The bells, upon entry into the United States, were valued at $40,085 and were subject to a duty of $2,004.25.

The Department of Commerce opposes enactment of H.R. 5829.

As a matter of policy, the Department prefers that private relief bills regarding the waiver of duties be enacted only if the goods purchased cannot be supplied by domestic producers.

There is currently only one producer of peal bells in the United States. This firm participated in the bidding for the casting and installation of the bells, but was not selected by the Church on the basis of a number of factors, including tonal quality, service, engineering design, and price. While in this case the additional expense of a duty on the bells may have been a small consideration in the selection process, and while the purchaser is a non-profit religious organization, the Department believes that a refund of the duty creates an unfair competitive situation for the sole domestic bell manufacturer whose market is largely comprised of non-profit organizations.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF THE TREASURY

The Department supports the approach taken in H.R. 5441 to uniformly and Treasury on H.R. 5829, a bill for the relief of the Foundry United Methodist Church.

The bill would direct the Secretary of the Treasury to admit free of duty six bronze bells (including all accompanying parts and accessories) for the use of the Foundry United Methodist Church of Washington, D.C. The bill further provides that if the liquidation of the entry of the bells has become final, the entry shall be reliquidated and the appropriate refund of duty shall be made.

The Department generally opposes passage of private relief bills, such as H.R. 5829, absent compelling, special circumstances, which would warrant an exception to the existing law. The Department is not aware of any equitable or other circumstances in this case which would cause the Department to depart from this position.

In general, the Department supports legislation that would afford duty-free treatment to all similar articles as long as a domestic industry is not adversely affected. In this case the six bronze bells could have been manufactured by a domestic firm. The House of Representatives addressed this matter when it passed H.R. 5441 on December 3, 1979. Section 2 of that bill contains a provision to permanently eliminate the duty on sets of tuned bells known as chimes, peals, or carillons, containing over 34 bells. This was done on the grounds that carillon sets containing over 34 bells are not manufactured in the United States and, therefore, bells imported in this category would not adversely affect the domestic industry.

The Department supports the approach taken in H.R. 5441 to uniformly and equitably apply the duty on bells. If H.R. 5829 were enacted, it would grant to a single institution more favorable treatment than is accorded other institutions of the same class, and could create dissatisfaction in other institutions which are obliged to pay duties on similar articles imported under like circumstances.

For these reasons, the Department opposes enactment of H.R. 5829.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 5829, a bill providing for the duty free entry of six bronze bells for the use of the Foundry United Methodist Church of Washington, District of Columbia.

We consider that the proposed relief is of primary interest to other executive agencies and accordingly defer to their views.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF LABOR

This is in response to your request for the views of the Department of Labor on H.R. 5829, a bill for the relief of the Foundry United Methodist Church.

The Department of Labor is opposed to the enactment of this bill.

This bill would permit the Foundry Methodist Church of Washington, D.C. to import duty free six bronze bells including all accompanying parts and accessories. Its enactment would probably have an adverse effect upon the only domestic firm that maintains the capability to produce bells of comparable quality. Moreover, this Department does not favor granting ad hoc duty dispensations to discrete interests in the absence of compelling circumstances.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

H.R. 5875

To amend the Tariff Schedules of the United States to repeal the duty on certain field glasses and binoculars.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 5875, if enacted, would reduce to free the column 1 rate of duty on certain field glasses, opera glasses, and prism binoculars (not designed for use with infra-red light) which are presently dutiable under items 708.51 and 708.52 of the Tariff Schedules of the United States (TSUS) at rates of duty of 8.5 percent ad valorem and 20 percent ad valorem, respectively. Column 2 rates of duty would not be affected by the legislation.

DESCRIPTION AND USES

Field glasses, opera glasses, and prism binoculars are optical instruments which contain a combination of lenses, or lenses and prisms in either one or two cylindrical holders, usually of metal or plastics. These articles are employed to aid the eye in viewing distant objects.

TARIFF TREATMENT

The tariff treatment for the articles considered in the proposed legislation is as follows:

		Col. 1	LDDC[1]	Col. 2
	Telescopes: Not designed for use with infra-red light:			
A 708.51	Field glasses and opera glasses (except prism binoculars).	8.5% ad val.	3.4% ad val.	45% ad val.
A 708.52	Prism binoculars	20% ad val.	8% ad val.	60% ad val.

[1] The LDDC rates apply to the products of those "least developed developing countries" listed in general headnote 3(d) of the TSUS.

All of these instruments have been designated as eligible articles for purposes of the Generalized System of Preferences (GSP) and are duty-free when imported from Designated Beneficiary Developing Countries.[2]

As a result of the Multilateral Trade Negotiations (MAN), the column 1 rates of duty applicable to TSUS items 708.51 and 708.52 will be reduced over an 8-year period, beginning January 1, 1980, from 8.5 percent ad valorem to 3.4 per cent ad valorem and from 20 percent ad valorem to 8 percent ad valorem respectively. The final rates will become effective on January 1, 1987.

STRUCTURE OF THE DOMESTIC INDUSTRY

There are no known domestic producers of any of the articles discussed herein.

IMPORTS

During the period 1974–78, imports of field glasses (including opera glasses) and prism binoculars declined from about 2.4 million units, valued at $21.8 million in 1974, to 1.9 million units, valued at $15.2 million in 1975, and then increased to 3.1 million units, valued at $40.9 million in 1978.

[2] See General Headnote 3(c) to the TSUS.

Japan is by far the principal source of imports, supplying an average of about 68 percent of the quantity and 77 percent of the value during the period 1974–78. Improved quality standards in Japanese-made field and opera glasses and prism binoculars are largely responsible for expanded shipments of these items to the United States.

APPARENT U.S. CONSUMPTION

Since there is no known domestic production, imports supply all of apparent U.S. consumption.

POTENTIAL LOSS OF REVENUE

In 1978, customs revenue collected on these items totaled $5.3 million. Assuming the 1978 volume of imports and allowing for the staged duty reductions over the next eight years under the MTN, the annual loss of customs revenue would be likely to range from approximately $5 million in 1980 to $2.1 million in 1987.

TECHNICAL COMMENTS

As pointed out in the tariff treatment section of this report, the LDDC rates of duty for items 708.51 and 708.52 are 3.4 percent ad valorem and 8 percent ad valorem, respectively. Since the LDDC column was established as a result of the MTN in order to provide the products of designated least developed developing countries with the immediate benefit, without staging, of the full MTN tariff reductions, the Congress may wish to further amend the TSUS by deleting the rates provided in the LDDC column for items 708.51 and 708.52 so that the new column 1 rate of "Free" would also apply to the products of least developed developing countries.[3] This can be accomplished by adding the phrase "and by striking out '3.4% ad val.' in the LDDC rate column" to the end of section 1(a) and by adding the phrase "and by striking out '8% ad val.' in the LDDC rate column" at the end of section 1(b).

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 5875, a bill to amend the Tariff Schedules of the United States to repeal the duty on certain field glasses and binoculars.

If enacted, H.R. 5875 would amend the Tariff Schedules of the United States (TSUS) to provide for an elimination of the column-1 rate of duty on certain field glasses and binoculars, not designed for use with infra-red light. Imports of the products subject to the proposed legislation are currently classified under TSUS items 708.51 and 708.52 and are dutiable at column-1, most-favored-nation, rates of 7.9 percent and 18.5 percent ad valorem, respectively. The column-2, statutory, rates of duty would not be affected by this bill.

The Department of Commerce supports enactment of H.R. 5875.

The Department is unaware of any domestic commercial production of field glasses, opera glasses and/or prism binoculars. The proposed duty elimination could lead to lower consumer prices on these products, thus helping to ease the burden of inflation. While some domestic production of prism binoculars does exist, this production is of high quality glasses specially ordered for military or other technical applications, and not stocked by retail outlets for public consumption. The Department does not believe that such production would be adversely affected by enactment of this legislation.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF TREASURY

This is in response to your requests for the views of the Department of the Treasury concerning H.R. 5875, a bill to amend the Tariff Schedule of the United States to repeal the duty on certain fieldglasses and binoculars.

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[3] TSUS General Headnote 3(d)(ii) provides that if no rate of duty is provided in the LDDC column for a particular item, the rate of duty provided in column numbered 1 shall apply.

The purpose of the bill is to amend items 708.51 and 708.52 of the Tariff Schedules of the United States by repealing the column 1 duty on certain fieldglasses and binoculars. Currently, the column 1 duty for products imported under these items is 8.5 percent ad. val. and 20 percent ad. val., respectively.

The Department of the Treasury has no objection to the enactment of this bill.

The office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 5875, a bill transferring certain field glasses and binoculars from the dutiable to the free list.

We note that H.R. 5875 is the companion to S. 1738 and have no objection to enactment of the proposed legislation. We are informed there is no domestic production of the field glasses and binoculars of interest and that elimination of the duties on such articles would permit a reduction in the price of such merchandise to consumers.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

H.R. 5952

To continue until the close of June 30, 1982, the existing suspension of duties on concentrate of poppy straw.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 5952, if enacted, would amend the Appendix to the Tariff Schedules of the United States (TSUS) to continue until June 30, 1982, the existing duty suspension on imports of concentrate of poppy straw. This duty suspension became effective November 8, 1977, and will expire June 30, 1980, unless extended.[1]

DESCRIPTION AND USES

"Concentrate of poppy straw" is a misnomer for a concentrated mixture of opium alkaloids obtained by solvent extraction from dried and crushed parts of the opium poppy plant. The concentrate is first prepared by extracting, with water or organic solvents, the opium alkaloids from crushed capsules (or flower heads) and upper stems of opium poppy plants that have been allowed to ripen and dry in the field before harvesting. Since the extraction liquid contains a relatively low percentage of alkaloids, it is further concentrated so that the alkaloids precipitate from the solution. The precipitated mixture (which contains gums, tars, and waxes in addition to the opium alkaloids) is usually dried, milled, and blended to yield a powder, although the mixture may also be imported in slurry or solid form. The alkaloid content of the concentrated mixture is usually over 50 percent, but ranges from about 20 percent to more than 90 percent.

In the United States, the imported concentrate is further processed into pharmaceutical grades of the individual opium alkaloids, such as morphine, codeine, and thebaine.

TARIFF TREATMENT

The U.S. Customs Service has classified imports of the concentrated mixture of alkaloids obtained by extraction from poppy straw primarily in TSUS item 439.30 (Advanced natural drugs). If, however, the alkaloid content of the concentrate is 90 percent, or more, Customs has tended to classify the concentrate in TSUS item 437.14 (Opium alkaloids and their compounds).

The column 1 rate for item 439.30 is 1.5 percent ad valorem,[2] and the column 2 rate is 10 percent ad valorem. The column 1 rate for item 437.14 is $1.50 per ounce,[3] and the column 2 rate is $3.00 per ounce. Items 439.30 and 437.14 are both eligible under the Generalized System of Preferences (GSP) treatment. There are no LDDC[4] concession rates for either item.

The column 1 and column 2 duties on concentrate of poppy straw (however provided for in part 3 of schedule 4) when imported for use in producing codeine or morphine were suspended by item 907.70, part 1B, Appendix to the TSUS, effective November 1977 through June 1980.

STRUCTURE OF THE DOMESTIC INDUSTRY

There are no domestic producers of concentrate of poppy straw. Two domestic companies, Merck and Co., Inc., (Rahway, N.J.) and Penick Corp. (Lindhurst,

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[1] Public Law No. 95-161, sec. 2; 91 Stat. 1273.

[2] The column 1 rate of duty for item 439.30 will not be reduced as a result of the recently concluded Multilateral Trade Negotiations (MTN).

[3] As a result of the MTN, the column 1 rate of duty for item 437.14 will be reduced in equal stages over a period of 6½ years to a level of "$1 per oz." commencing with the effective date for the United States of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Valuation Agreement).

[4] Least developed developing countries.

N.J.), a division of CPC International, Inc., produce pharmaceutical grade medicinals (morphine, codeine, or thebaine) from imported concentrate of poppy straw.

In the United States, the importation, exportation, manufacture, distribution, and dispensing of narcotic substances (including concentrate of poppy straw) are regulated by the Drug Enforcement Administration (DEA) under the Controlled Substances Act, as amended (21 U.S.C. 801). Under this authority, DEA issues permits for imports and exports, and registers persons and companies to manufacture, distribute, and dispense controlled substances.[5]

IMPORTS

The vast majority of this merchandise is believed to enter under TSUS item 439.30. Separate statistical data for imports of poppy straw extract (TSUSA item 439.3080) have been published only since 1978 and are tabulated below for 1978 and 1979.

TABLE 1.—POPPY STRAW EXTRACT: U.S. IMPORTS FOR CONSUMPTION 1978 AND 1979

[Quantity in pounds; value in dollars]

Source	1978		1979	
	Quantity	Value	Quantity	Value
Netherlands	64,832	16,644,280	40,794	10,110,596
France	22,410	4,896,400	16,592	3,902,884
Yugoslavia	1,653	495,788		
Other	5,463	10,843	8,344	263,719
Total	94,358	22,047,311	65,730	14,277,199

Source: Official statistics of the U.S. Department of Commerce.

Statistics on imports of poppy straw extract classified in TSUS item 437.14 are not available since a separate statistical class covering this product has not been established under this TSUS item.

APPARENT U.S. CONSUMPTION

Exports of concentrate of poppy straw are believed to be negligible or nil and there is no domestic production. Imports are, therefore, approximately equal to domestic consumption.

POTENTIAL LOSS OF REVENUE

On the basis of the value of imports classified in TSUSA item 439.3080, loss of revenue resulting from the suspension of duty on imports of poppy straw extract amounted to about $330,000 in 1978 and $215,000 in 1979. Future loss of revenue is expected to range from $200,000 to $400,000 per year.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 5952, a bill to continue until the close of June 30, 1982, the existing suspension of duties on concentrate of poppy straw.

If enacted, this legislation would amend the Tariff Schedules of the United States to continue until the close of June 30, 1982, the current duty suspension on imports of concentrate of poppy straw from all suppliers. These imports currently enter the United States duty-free under TSUS item 907.70.

The Department of Commerce does not oppose enactment of H.R. 5952. In addition, the Department would not oppose permanent suspension of the duties on concentrate of poppy straw.

The United States is totally dependent on imports of crude gum opium and concentrate of poppy straw for the production of opium-based drugs for medicinal

[5] E.g., the Cotrolled Substances Import and Export Act, 21 U.S.C. 951–965. See also, 21 CFR 1301.28, 1311.27 and 19 CFR 12.36, 162.61 (1979).

purposes, including codeine, morphine and thebaine products. Presently, specified amounts of the raw materials are legally imported by three U.S. pharmaceutical firms under strict control of the Drug Enforcement Administration (DEA). Faced with growing demands for codeine and morphine products and a worldwide shortage of crude opium gum, DEA instituted emergency measures in 1976 to lift the import embargo on concentrate of poppy straw. While the shortage of crude gum opium has eased over the period that the current duty suspension has been in effect, DEA has not rescinded its emergency regulations permitting the importation of this product. Inclusion of poppy straw concentrate on the list of products approved for importation is consistent with our national policy to import only raw materials used in the production of narcotics. Furthermore, DEA has kept the emergency regulations in effect to guard against future world shortages of narcotic raw materials. In that regard, DEA sees the possibility of future shortages of thebaine, a drug which can be processed from poppy straw concentrates.

Continuation of the duty suspension would be beneficial to the three firms licensed to import concentrate of poppy straw. These firms manufacture bulk morphine and codeine, which is then sold to other pharmaceutical manufacturers for further processing into dosage forms. Enactment of this legislation would reduce the costs of both U.S. importers who continue to purchase concentrate of poppy straw to meet part of their raw material demand and of purchasers of bulk narcotics.

Suspension of the duties would have no adverse effect on U.S. industry because, at the present time, there is no domestic production of concentrate of poppy straw. Moreover, in the event that any of the companies licensed to import poppy straw and to manufacture codeine and morphine should develop the capacity for this production, they would not be able to meet the needs of the other licensed companies because the Drug Enforcement Administration imposes a quota on the amount of opium each can import. A company could only import enough poppy straw to manufacture an amount of concentrate with an anhydrous morphine content equal to that of its opium quota. Thus, it would be technically impossible for domestic firms to meet the raw material needs of all companies. We note further with regard to the anticipated effect of the proposed legislation on U.S. industry that we are unaware of any objections by domestic firms producing morphine derivatives or other pain-relief medicines and drugs, including synthetic drugs, to the proposed suspension of duty on concentrate of poppy straw.

Finally, the Soviet Union and Bulgaria, subject to column-2 rates of duty, while not currently exporters of the material, are included in DEA regulations as approved sources of supply for poppy straw concentrate. Were serious shortages of crude gum opium to reoccur, these countries could become important sources of supply. Consequently, it is necessary to continue the suspension for column-2 countries.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 5952, a bill providing duty free entry for concentrate of poppy straw.

The Department of State has no objection to the enactment of the proposed legislation. It would continue the temporary duty free entry for concentrate of poppy straw provided in Public Law 95–61, effective November 8, 1977, for an additional period ending June 30, 1982.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF AGRICULTURE

This is in response to your request for this Department's views on H.R. 5952, a bill to continue until the close of June 30, 1982, the existing suspension of duties on concentrate of poppy straw.

The Department has no objection to the enactment of H.R. 5952.

H.R. 5952 would extend, from July 1, 1980 through June 30, 1982, the suspension of duties on concentrate of poppy straw when imported for use in producing codeine or morphine. Concentrate of poppy straw is a raw material used in the production of medicinal codeine and morphine. Its importation and processing into medicine are regulated under the Controlled Substances Act.

Under H.R. 5952, the suspension of duties would apply with respect to articles entered, or withdrawn from warehouse, for consumption after June 30, 1980. If the current suspension is not continued, the applicable duties will be those provided for in Part 3 of Schedule 4 of the Tariff Schedules of the United States (TSUS) relating to drugs and related products (i.e., 1.5 percent ad valorem under column 1 and 10 percent under column 2 of TSUS item 439.30). The increased duties probably would be passed on to consumers in the form of higher prices for drugs containing concentrate of poppy straw.

There is no competing, legal domestic production of a like product.

The enactment of H.R. 5952 would have no budgetary impact on the Department.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

H.R. 5961

To amend the Currency and Foreign Transactions Reporting Act to (1) provide for more efficient enforcement of its provisions by making it illegal to attempt to export or import large amounts of currency without filing the required reports; (2) allow U.S. Customs officials to search for currency in the course of their presently authorized search for contraband articles; and (3) allow for the payment of compensation to informers.

DEPARTMENT OF THE TREASURY

This is in reply to your request for the views of the Department of the Treasury on H.R. 5961, a bill to amend the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1101–1105).

Title I of H.R. 5961 would amend section 231(a) of the Act, by expressly making it a crime to attempt to export or import currency without filing the required reports. This Department believes that this proposal is essential in order to eliminate an anomaly which has arisen as a result of the unreported decision in case of *U.S.* v. *Centeno*, No. 75–660–CR–JE (S.D. Fla., March 25, 1976). In that case, the defendant, while in the process of leaving the United States, was discovered to have $250,000 in American currency in his possession which he had failed to report. Although he readily admitted to having knowledge of the reporting requirements, the case was dismissed after the court concluded that a violation cannot occur until the person actually leaves the United States without filing the required report. The Department believes that the proposed attempt provision will remedy this type of situation and give the Government a greater tool in halting the financing of large-scale drug trade. It is our view that the attempt provision coupled with issuance of regulations specifically establishing the time when reports must be filed will prevent other *Centeno* cases from arising.

Title II would amend section 235 of the Act to allow Customs officers at the border to search for currency or other monetary instruments in excess of $5,000 when reasonable cause exists to suspect that a violation of the reporting requirements is occurring.

When the Act was promulgated into law in 1970, Congress expressed its intent that searches for unreported currency, wherever conducted, should be made only where probable cause exists to believe that a violation of the Act has occurred. However, the Department believes that the present scope of the problem warrants the use of all constitutional powers which the Government has at its disposal. Thus, the warrantless search authority of the Customs Service should also be used.

The authority of Customs officers at the border to search without probable cause or a warrant for merchandise or articles being imoprted contrary to law has long been recognized and most recently upheld by the United States Supreme Court in 1977. See, *U.S.* v. *Ramsey*, 431 U.S. 606. This authority is derived from the explicit constitutional power of Congress to regulate and control interstate and foreign commerce and the inherent power of a sovereign to control what comes into and goes out of the country.

Two courts have squarely faced the issue of the legality of an exit border search based on less than probable cause and. in each of these cases, the court upheld the search. *U.S.* v. *Stanley*, 545 F. 2d 661 (9th Cir. 1976) cert. denied 436 U.S. 917 (1978) ; *U.S.* v. *Ajlouny*, 476 F. Supp. 995 (E.D. N.Y. 1979). The Supreme Court has stated, by way of dicta, however, that there is no constitutional difference between inbound and outbound searches at the border. *California Bankers Association* v. *Schultze*, 416 U.S. 21, 63 (1974). In view of the above, the Department believes that the provisions of this bill are within constitutional limits and essential to combat this problem.

Title III would add a new section to the Act, authorizing the Secretary to pay awards to persons furnishing information leading to the recovery of currency

and monetary instruments transported in violation of the reporting requirements of the Act. Awards would be authorized only when the Government realized an actual recovery of $50,000 or more by way of fines, penalty, or forfeiture. The Department believes that this minimum recovery standard will serve a dual purpose. First, it will assist the Customs Service in focusing its investigative resources on financiers of large scale drug operations by encouraging persons to provide information on large movements of currency and monetary instruments as opposed to otherwise uninformed travelers transporting relatively insignificant amounts of currency who may forget or be misinformed about the reporting requirements.

Specifically. this title contains four provisions. Subsection (a) contains authority for the Secretary to pay a reward to informants. Subsection (b) sets forth a limit on the amount of rewards. Subsection (c) clarifies eligibility for a reward; and subsection (d) authorizes appropriations to carry out the section.

The Department of the Treasury strongly urges enactment of H.R. 5961.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

THE WHITE HOUSE,
Washington, D.C., April 10, 1980.

Hon. CHARLES VANIK,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: H.R. 5961, a proposed bill to amend the Currency and Foreign Transactions Act (31 U.S.C.) is currently before the Subcommittee on Trade and could have a very significant impact on illegal drug traffic. First proposed by Congressman LaFalce nearly a year ago, the bill was introduced as H.R. 4071, 4072, and 4073. The provisions of those three bills have been combined into three titles of H.R. 5961. Title I would amend 31 U.S.C. 1101(a) to make it illegal to attempt to transport currency or other monetary instruments into or out of the United States without filing the required reports. Title II would amend 31 U.S.C. 1105 to permit Customs officers to search individuals and conveyances at the border when they have a reasonable cause to suspect that there are monetary instruments in the process of being transported for which a report is required. Title III would add a new section to the law to authorize the Secretary of the Treasury to pay an informant 25 percent of any recovery actually realized by the Government in excess of $50,000, but that any amount paid to an informant could not exceed $250,000.

The latest intelligence estimates show that there are over $50 billion per year involved in illegal narcotics transactions alone. My office, as well as other departments and agencies of the Federal Government who are charged with the responsibility of curtailing the flow of illicit narcotics into and through the United States, support this legislation and believe it will prove invaluable in our efforts to combat organized and white collar crime.

Therefore, I urge you to support this much-needed legislation in order to bring it before the House as expeditiously as possible. If I may be of any assistance to you or the Subcommittee, please do not hesitate to call upon me.

Sincerely.

LEE I. DOGOLOFF,
Associate Director for Drug Policy,
Domestic Policy Staff.

TUCSON, ARIZ., *March 11, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, House Ways and Means, Trade Subcommittee,
Longworth House Office Building, Washington, D.C.

DEAR SIR: It has just come to my attention that an amendment to the Bank Secrecy Act of 1970, labeled HR 5961, is moving through the legislative process and, at this time, has been referred to your Subcommittee. It was originally sponsored by the Reichkomissar of the (U.S.) Treasury and supported by the minor komissars of Customs, Currency and the Drug Enforcement Agency (although drugs are not mentioned in the amendment).

I do not use the appellations Reichkomissar and komissar lightly. The provisions of this bill closely parallel the regulations fastened by Hitler on the German people. Hitler's economic and monetary crimes were among his worst. It is indeed alarming that the United States Congress world even consider such a bill.

Actually, as I understand it, there has been little "consideration". i.e., hearings given to this proposed legislation. I urge you to have very extensive testimony from all interested parties on this proposed amendment and to cease the sneaky procedures used to date.

The way that this bill has been handled so far is further proof that its ostensible purpose to help control drug traffic is only a pseudo-purpose. Historically around the world (and the United States does not exist in a vacuum) the true objectives of such legislation is money control. It is a giant step toward the Nazi/Communist concept of complete exchange controls.

A quick test of the amount of freedom existing in a country is provided by examining the ease with which one can leave and enter one's own country. If one is not to be allowed to transport money (in any form) out of the country, then one is really being highly restricted from leaving the country. If one is prevented from bringing funds into the country, these funds are useless to their owner. What kind of a sick concept is it that can make the money of one's own country "contraband", as does this bill?

The bill sets up a bounty system with rewards of up to $250,000 to help catch "violators". That is about one hundred times what is offered hereabouts to catch murderers! When economic crimes are treated as far worse than traditionally-regarded crimes, its is evidence that we are well into a system of State-Capitalism/National-Socialism (Nazism).

Having watched the bureaucracy work over many years, it is obvious that the basic motives of the "Treasury" are simply to expand its empire and to increase its power over the people, especially the middle class. Experience indicates that the bill will have little or no effect on the extremely rich and the (drug) criminals.

This bill may never have any effect on me personally. Yet I vehemently oppose it, because freedom is indivible. If the *human rights* of people with money can be violated, it is inevitable that those without will soon find that their rights are taken away too. Crime is increasing across the United States because The Congress is constantly creating new classes of criminals!

I respectfully request that this written testimony be included in the record.

EDWARD AHRENS.

BEACH HAVEN, N.J., *March 13, 1980.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel Longworth, House Office Building,
Washington, D.C.

DEAR MR. MARTIN: In reference to H.R. 5961—an Amendment to the Bank Secrecy Act of 1970, "The Drug Bill" which would amend the Currency and Foreign Transaction Reporting Act I want the following testimony included in the record.

I am well aware of the vicious people, mostly in the executive branch, who tried first to sneak this legislation through the House. I recognize these people as working for the Council on Foreign Affairs and the Trilateral Commission. I also recognize that these people are very sinister and tricky. Their aims are explained away or hidden if possible.

If H.R. 5961 is meant to control drug trafficking why must we surrender freedoms, make confessions, and get permission for transferring capital (nondrug) out of the United States? Why weren't drugs mentioned in the original legislation?

I sincerely believe H.R. 5961 is meant to seal in the "dollar pool" and a further step to foreign trade nationalization while also trying to cover up the immoral theft of our assets by an illegal money system.

This legislation also proposes unconstitutional warrantless searches with no probable evidence of violation. Would this sanction strip searches? If it does what is next, human cavity searches? Arrest would be made even if the capital never left, or entered, the country. Only attempts at transfer are needed for violation.

This bill is a restriction on foreign exchange, foreign trading and travel. Foreign exchange and trade scarcities are bound to develop. House Resolution H.R. 5961 sounds like an attempt to fix prices. The effects of inflation can not be covered up. Also, sealing in of the "dollar pool" for the purpose of further inflating is a very bad act. We should not support the Trilateral Commission. This bill is a further step on the way toward a substitution of socialism for the market economy. The section on having citizens turn states evidence for rewards is highly amusing.

If you want a bill to help stop drug trafficking, design one; but please leave our freedoms alone.

Sincerely,

THOMAS ALLEN.

BEACH HAVEN, N.J., *April 12, 1980.*

I request that the following testimony be included in the record on H.R. 5961. This is a letter of objection.

This legislation appears to be an attack on our freedoms while doing nothing directly or meaningfully to cut back specifically on the flow of illegal drugs or underground movements of capital. The way the legislation is being put forth as something against crime is a crime in itself. It appears to fly smack against our Fourth Amendment.

I assume that this legislation is wanted to intimidate, harass and control the natural flow of people or things. Would power be complete in the time of an international or National Emergency as the Trilateral Party is prone to announce? I simply believe that one of its purposes is to give the appearance of calm and a balanced economy, while actually eventually destroying it and our currency, the Federal Reserve Note, along with the poor people who had trusted this Dollar, or whatever, and the People who had started this terrible fiat script that has so hampered or country.

I followed this so called "Drug Bill" while it was trying to be swept to our President's desk, where he most probably would have signed it in one hour. This bill is not something for The United States.

With the Federal Reserve inflating so fast it is really immaterial what value you would place on the amount of "contraband" that one can take out of or attempt to take out, or into the country without either being subject to "strip searches" without a warrant or having to sign a "confessional statement". I also assume that any sort of capital would be contraband.

This legislation can not possibly help our country. I object to this amendment to The Bank Secrecy Act of 1970 very much.

Sincerely,

THOMAS SCOTT ALLEN.

NORTH CHICAGO, ILL., *March 26, 1980.*

Hon. CHARLES A. VANIK,
Member, U.S. House of Representatives, Chairman, Subcommittee on Trade, Washington, D.C.

DEAR MR. CONGRESSMAN: Hearings before your subcommittee are now being conducted regarding HR 5961. I respectfully request that my comments be entered into the record.

An aide to Congressman John La Falce courteously responded to all my questions, and I still stand completely opposed to HR 5961.

I have a past involvement in law enforcement and am a founder of two drug rehabilitation agencies.

There is no way HR 5961 will dent the drug traffic. Drug buys far exceed $10,000, and other illegal transfers of money also far exceed $10,000.

What you are succeeding in doing is just making another law, something that many of you have been doing for years, and the results can be seen daily.

I would agree with all of Congressman Ron Paul's comments regarding the infringement on personal rights, but the overriding factor is the absolute worthlessness of the law.

I'm told a number of agencies (Drug Enforcement Administration, Departments of Treasury and Justice, and the U.S. Customs Service) say this piece of legislation will resolve some of the problems in drug trafficking (plus John La Falce's aide saying the bill will also stop Organized Crime monetary transfers and Multil-National Corporate questionable monetary transfers).

The comments of John La Falce's aide definitely show the bill has intentions beyond drug trafficking—the obvious question—"How far beyond"?

The answer to resolving the drug problem is not found in HR 5961.

May I respectfully submit where in the answer is found—

Freedom for the police officer to do his job—We still delegate to him the responsibility to maintain order, now let's return to him the authority to do so.

Perhaps it would do well to consider one simple fact—

Government is not an answer—people are.

Sincerely,

ROBERT J. BYRNE.

ST. LOUIS, MO., *April 28, 1980.*

TO WHOM IT MAY CONCERN,
House Ways and Means Trade Subcommittee,
Longworth House Office Building, Washington, D.C.:

Please record this letter as one voters request that you kill H.R. 5961.

I strongly object to this bill and hereby request that this objection be entered into the record.

Sincerely,

THOMAS B. EARL.

HOUSTON, TEX., *April 7, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Ways and Means Committee, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN VANIK: This Bill has all the earmarks of being a Bill for regimentation of the citizens of the United States. It is in a class with the Energy Crisis; Regionalism with it's control of almost our entire lives—or they will soon be trying to make it so; the destruction of our Dollar, the programmed ruination of our economy and the many other confinements that you know about which should never have been allowed to be imposed upon the citizens of the U.S.

It is for my opposition to regimentation in a Free Country, where we have allowed these oppressive measures to be foisted on Americans, by either a collusive Senate and House, or groups which have been insensitive to these unconstitutional measures. It could be by intimidation, coercion and harrassment imposed upon them by the hidden, sub-rosa Government.

A government which can operate so illegally and "hang" the people with Bills such as the subject, can and will subjugate the populace with any measure they deem necessary to communize our great country. If you have no energy you can't travel. If you can't travel you can't go abroad. If you can't go abroad you do not need foreign exchange. All you have to do is stay at home, work for the benefit of the Elite. The citizens, through this premeditated and planned ordeal will be lucky if they salvage any of their property or funds, should they be lucky enough to survive.

Any Bill which has to be presented in the hasty shape that this bill endeavored to be pushed through the House, with but three days for study and one day for presentation, on a question so consuming, certainly has to be thought of in the sense of trying to get something by the House rather than as a matter of expedience. This brings into light the promiscuity of the use of the Federal Register for bypassing the Congress of the United States and getting illegal measures into Law. Far too much of this miscreant dereliction has taken place and it is high time the elected officials take it upon themselves to rid us of this foul curse!

Furthermore, any Bill which is presaged as a measure to help the Tobacco and Alcohol Division of the Treasury and then proceeds to completely ignore Treasury's use of the Bill to work against dope smugglers—and then never mentions the words dope smugglers—has to be recorded as a great Lie. There have been far too many Lies taken for truths by our Congress recently.

Just because a colleague says that H.R. 5961 is a Bill to help Treasury lassoo the dope smugglers, doesn't make it so. However there are so many friendships and small groups of friends who rely on the other's appraisal of proposed legislation for direction, instead of analyzing the bill themselves to determine the presence of pulchritude, persuading scornful treatment, on their part of such measures.

With every Congressman's office, desk and mind so filled with all of the work, intrigue, or otherwise, that he has to deal with daily, it is easily understood how

a friendly colleague, on hearsay, tells him to vote for H.R. 5961 because it will help Treasury. Not knowing that his friend has not studied the bill, has arrived at his conclusion from other equally not prepared to comment, because of unpreparedness. It's easy, with such unstudied information to accept the word of others, toss the bill aside, remembering that he will vote for it and tell his friends to vote for it too. Thus, it is to the peoples loss and chagrin that such deleterious bills are passed into law. Is it any wonder that we're headed, as fast as lightning, almost, right into the clutches of those desiring to turn our government over to the Communists, without so much as firing a shot—a la Zbigniew Brzezinski, our securityless Security Czar?

Congressman Ron Paul, thanks to his close scrutiny of H.R. 5961, prepared a rebuttal to the measure and appeared before the hearing Commitee on January 29, 1980. He was able to have the measure postponed until March 17, so that Congress could give it more thought. Now, even though it has had another extension to April 17, for your Committee to hear, I daresay that at the time this letter is being written, three months later, that few other Congressmen have studied the Bill, or who even know that nowhere in it is the words "dope smuggling" for Treasury mentioned! Such tampering with the truth; such misrepresentation of facts; such whispered comments of the miscontents of a bill so harmful to the citizens has to be reckoned for the injurious toll it is to have upon our Nation. All have to be considerations of this Bill.

There is no question but that the sleazy way in which this bill has been hustled, that the authors should be ferretted out and spoken to severely. To attempt to impress such Traitor(s) and accomplices, their subversion, and if at all possible remind them of laws for Treason, if you do not deal the treatment of the laws to them at this time, which should, in no uncertain terms be done. This injurious activity to our government has run the extent of our ability to absorb further traitorous incursions against our way of life and the life of our fine Nation.

It is an inglorious day when a member of Congress allows his name to be used in attempted legislation of this kind. They too must be warned that the patriotic and loyal performance of their office does not allow for such collusion and that it must be terminated. Stiffer measures should be inflicted.

If you have read this far, you know that I, personally, and many others, too, are damnably opposed to H.R. 5961 and all the regimentation it carries with it. This is our same attitude on the other freedom scuttling conveyances which have been illegally entered into (unconstitutional and illegal) laws for us.

Kill H.R. 5961, before it, added to the other Elite laws for repression passed against our people are allowed to Kill Our Nation!

Please have this letter read into your minutes of the April 17 meeting of your Committee. With best wishes and thanking you, I am,

Sincerely,

ARTHUR C. FENNEKOHL.

HOUSTON, TEX., *May 4, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Ways and Means Committee, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN VANIK: You and your Committee members are to be heralded for delaying the subject Bill. It is a disgrace to our forefathers who so carefully handled our future by composing a Constitution which would encompass all phases of the Rights of the American Peoples. Only lately are esoteric bums in our Legislative bodies plumbing the depths of this great piece; this all inclusive masterpiece of forethought; the model of all Laws contrived to enable a vast body of people to be guided, their welfare and freedoms protected.

Only now are we faced with a sub-rosa government of Elite Internationalists who are intent in stealing our government from us, divesting us of all our property and enslaving the population, in so doing.

The strange aura of the United Nations permeates the minds of those strangers among us who think that they could live better under Communism than they can under the Free Life of the Constitution of the United States. Certainly they can not be allegiant to both causes at the same time. Nowhere in the United Nation's decrees are the words free or it's derivatives mentioned. Yet these determined traitors in both houses of Congress constantly push toward undermining our great Nation and preparing it for it's entry into an ineffective Com-

munist group of Nations called the United Nations. The subject bill is just another step in that direction. Another demeaning bill being foisted upon the American people by a bunch of greedy, disloyal and treasonous individuals intent upon undoing all the fine qualities of our Constitution and environs.

For year, many of us sensed something happening to our great and wonderful Nation. It was not until Norman Dodd, M.C., in 1953–1954 was assigned the job of finding out what the great financial foundations in the United States, were doing with their funds. More adroitly, what the Tax Exempt Foundations were doing with their money.

Upon contacting Rowan Gaither, President of the Ford Foundation, and some of his counsel, he, Norman Dodd, was told: "Most of us here were at one time or another, active either in the O.S.S., the State Department, or the European Economic Administration. During those times, and without exception, we operated under directives issued by the White House, the substance of which to the effect that we should make every effort to so alter life in the United States as to make possible a comfortable merger with the Soviet Union. We are continuing to be guided by such directives." H.R. 5961 is just another step in such alteration.

Congress has been avalanched with such unConstitutional Directives and Legislation, at an ever increasing tempo over the past years. At present there seems to be build-up for finalization of the odds and ends which, with their repugnance, have been delayed to keep the public from catching on to their treason. By the termination of our freedoms for entry into the diabolical United Nations, operated by Communists. By foreigners who are thrust into our government who could not care less about our standards of living. The Constitutional Living we have forged for ourselves by upholding guidance of this great and kindred documents. By people who lead us into No-win Wars; a fanatical Energy Crisis; by paying Billions of Dollars to give to Panama our most strategic and valuable piece of property. These and other enigmatics are being whizzed by us so fast, that if the brakes are not applied soon and with determination, that small part of our Republic which remains will be horrendously stripped from us.

H.R. 5961 also folds into the attached retinue of the groups of Rockefeller interests which are hired and organized to drive our Republic into the United Nations One-worldism. This indicates the depths to which they have plumbed to attempt a U.S. takeover—all nice and legal!!! To not only alter our minds but to enforce upon us—all Americans—their wanton desires to grab our property and funds, both individual and corporate and to enslave those citizens who might be so fortunate as to escape death of their treason, dished out a little at a time to avoid citizen detection. A government within a government—of which there are others. All connected with these designers of overthrow should be charged and tried for the treason they are trying to enforce upon the United States. Dealing with the enemy. Aiding, abetting and upholding enemy designs upon the United States.

To be included among these traitors should be the 33 M.C.'s who signed H.R. 5961. For whatever reason they give, they have violated their Oaths of Office and the Constitution of the United States. It is high time these scoundrels start to be treated for what they really are. If they are stupid and do not know better, the Congress of the United States is no place for them. The sooner we get rid of them, the better.

It is for these reasons that I am heralding you and your committee members for slowing down the transgressions of these Traitors upon the rights of the American citizens. May your meeting of May 21st end any further consideration of H.R. 5961. May it also bring out the need for close observation and action to quell the incursion of bills of this nature of sleight of hand and treason. It is a sad day for the United States, when our officials who are elected to Washington to Legislate have to act as protectors of the citizen's rights against the Traitors who abound in our Washington government today.

It is hoped that you and your Committee members will be ever watchful for any against acts of Treason. That you will start—light—a flame—on the torch of freedom which will culminate, soon, in the eradication of those within our government or who have set themselves upon the side to impoverish and defeat our style of life and our type of government. For that torch to be carried on to yet other groups, committees and individuals serving the people to defeat Traitors!

With best wishes to you and your honorable Committee members, I am, with patriotism for the United States, first, last and always,

Most sincerely,

ARTHUR C. FENNEKOHL.

P.S.—If these thoughts seem worthy to you, please have them read into the minutes of your meeting, May 21(?), 1980.

ROCKEFELLER RETINUE OF SUPPORTIVE GROUPS FOR U.S. OVERTHROW [1]

Round Tables

Council on Foreign Relations
Trilateral Commission
Bilderberger Society

Policy Making Foundations

Ford Foundation
Rockefeller Foundation
Russell Sage Foundation

Funding Conduit Foundations

Janss Foundation
Bernstein Foundation
J. M. Kaplan Foundation
Eli Lilly Endowment, Inc.
Rockefeller Family Fund
Samuel Rubin Foundation
Stern Family Fund
Twentieth Century Fund
World Council of Churches
National Council of Churches

Law Firms

Arnold & Porter
Clifford, Warnke, Glass McIlwain & Finnery
Corcoran, Youngman & Rowe
Fried, Frank, Harris, Shriver & Kampelman
Paul, Weiss, Rifkind, Wharton & Garrison
Stroock, Stroock & Lavan

Top Rockefeller Family Law Firms

Coudert Brothers
Covington & Burling
Cravath, Swain & Moore
Debevoise, Plimpton, Lyons & Gates
Milbank, Tweed, Hadley & McCloy

Special Operations Law Firms

Surrey, Kanasik & Moore
Sullivan & Cromwell
Williams, Connolly & Califano
Wilmer, Carter & Pickering

Other Invisible Gov't Invisible Lawyers

Hogan & Harston
Shea & Gardner
Caplin & Drysdale
Phillips, Nizer, Krim & Ballon
Simpson, Thatcher & Bartlett
Lord, Day & Lord
Dilworth, Paxon, Kalish, Levy & Goldman
Dewey, Ballentine, Bushby, Palmer & Wood
Patterson, Belknap & Webb
Cleary, Gottlieb, Stein & Hamilton

Corporate Intelligence & Paramilitary Capabilities—Think Tanks

Brookings Institute
Center for Strategic & Internat'l Studies
Hoover Ins't on War, Revolution & Peace
Hudson Institute
Mitre Corporation
Rand Corporation—Played Import. Part
- Lebanese Civil war
- War of the Pacific
- Watergate
- N.Y. Rand—counterinsurgency—specialty
- Brainwashing
- International Terrorism

Worldwatch Institute

Police State Apparatus

Cornell School of Industrial & Labor Relations
Institute of Social Research
Department of Justice
Treasury Department
Energy Research & Development Administration
International Association of Chiefs of Police
Police Foundation
Rockefeller's 1984—Mind Control Institution

Democratic Advisory Council (D.A.C.)

Foreign Affairs Task
Domestic Affairs Task
Democratic Party Platform
Initiative Comte for National Economic Planning
Defense & Arms Study Group
International Economy Task Force
Russia & Detente Study Group
North Atlantic
Asia
Middle East
Africa
Latin America
Relations between Developed and Developing Countries
UN Study Group
Domestic Economy
Domestic Income Policy
Energy—Health
Personal Freedoms & Civil Rights
Social Policy
Social Services

[1] These are the headings shown in "A Special Report to the U.S. Population—Carter and the Party of International Terrorism." Published by the U.S. Labor Party, Campaigner Publications, Inc., New York, N.Y. 10001—August 1976.

Foundations Not Before Mentioned

Field (Marshall) Foundation
Twentieth Century Fund

Institute of Policy Studies

Terrorist Intelligence Gatherers

Center for Defense Information
Center for National Security Studies
Counter Spy—Fifth Estate
Editorial Board
Project on Official Illegalities

Community Control Units

Cambridge Policy Studies Institute
Democratic Party Penetration
Institute for Southern Studies

International Networks

Transnational Institute
North American Congress on Latin America

Press

Fund for Investigative Journalism
"Not-A" Fabians
Libertarian Party

Center for Law & Social Policy

Board of Advisors International Projects
Board of Advisors, Women's Rights Project
CLSP Staff of Attorneys

Center for Responsive Study of Law

Key Personnel—Ralph Nader—Fdr. & Chr.
CSRL Groups

Common Cause

Legal Counter Gangs

American Civil Liberties Union
Center for Constitutional Rights
Law Students Civil Rights Research Council
National Emergency Civil Liberties Comte.
National Lawyer's Guild
Political Rights Defense Fund

Countergangs

Monthly Review
The Guardian
New Left Review
Ramparts London Bulletin (Gr. Britt.)
Telos—Radical America
Elsevier Press—The Situationist Netwk.

Umbrella Groups

July Fourth Coalition
Peoples Bicentennial Commission

Component Parts

American Indian Movement
Communist Labor Party
Communist Party—U.S.A.
October League
Puerto Rican Socialist Party
Revolutionary Union
Socialist Workers Party
Vietnam Veterans Against the War
Black Liberation Army
Symbionese Liberation Group
Weatherman
Klu Klux Klan
Jewish Defense League
Minutemen
National Revolutionary Army
Unification Church International

DO WE FIGHT FOR THE RIGHTS OF THE U.S. AS OUR FOREFATHERS DID OR DO WE WATCH THE OBSEQUY OF OUR GREAT AND WONDERFUL NATION?

HAVE YOU EVER WONDERED WHAT HAPPENED TO THE 56 MEN WHO SIGNED THE DECLARATION OF INDEPENDENCE?

The price they paid

Five signers were captured by the British as traitors, and tortured before they died. Twelve had their homes ransacked and burned. Two lost their sons in the Revolutionary Army, another had two sons captured. Nine of the 56 fought and died from wounds or the hardships of the Revolutionary War.

They signed and they pledged their lives, their fortunes, and their sacred honor. What kind of men were they? Twenty-four were lawyers and jurists. Eleven were merchants, nine were farmers and large plantation owners, men of means, well educated. But they signed the Declaration of Independence knowing full well that the penalty would be death if they were captured.

Carter Braxton of Virginia, a wealthy planter and trader, saw his ships swept from the seas by the British navy. He sold his home and properties to pay his debts, and died in rags.

Thomas McKeam was so hounded by the British that he was forced to move his family almost constantly. He served in the Congress without pay, and his family was kept in hiding. His possessions were taken from him, and poverty was his reward.

Vandals or soldiers or both, looted the properties of Ellery, Clymer, Hall, Walton, Gwinnett, Heyward, Ruttledge, and Middleton.

At the Battle of Yorktown, Thomas Nelson, Jr., noted that the British General Cornwallis, had taken over the Nelson home for his headquarters. The owner quietly urged General George Washington to open fire. The home was destroyed, and Nelson died bankrupt.

Francis Lewis had his home and properties destroyed. The enemy jailed his wife, and she died within a few months.

John Hart was driven from his wife's bedside as she was dying. Their 13 children fled for their lives. His fields and his grist mill were laid waste. For more than a year he lived in forests and caves, returning home to find his wife dead and his children vanished. A few weeks later he died from exhaustion and a broken heart. Norris and Livingston suffered similar fates.

Such were the stories and sacrifices of the American Revolution. These were not wild-eyed rabble-rousing ruffians. They were soft-spoken men of means and education. They had security, but they valued liberty more. Standing tall, straight, and unwavering, they pledged: "For the support of this declaration, with a firm reliance on the protection of the Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor."

GLEN RIDGE, N.J., *March 10, 1980.*

Mr. JOHN M. MARTIN Jr.,
Chief Counsel, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: As concerned citizens, this letter is to convey to you our objection to Bill HR-5961. This bill contains the seeds of totalitarian control of our personal movement with the outside world.

This nation was not made great by the restriction of movement, whether of person or property. The magnetism of America has been its free voluntary movement of people and their possessions in and out of America. All dictatorial governments hinder the movement of people by confiscating or restricting their belongings. Let us not follow their lead.

In addition to the above, the bill will utimately have bad economic results, has no statement about drugs, (since when will veteran drug smugglers expose themselves) and finally, most important, the bill will violate our Constitutional Fourth Amendment Rights.

Please see that our objections to bill HR-5961 are included in the record. Do not pass this bill.

Very truly yours,

CARL J. FINNERAN.
STELLA FINNERAN.

SUN CITY, ARIZ., *April 10, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN VANIK: Will you please see that my following comments on the above bill are ordered into the record of the hearing:

Millions of my fellow citizens, if they had any knowledge that the above bill was being considered for passage would, I sincerely believe, agree with me that its enactment would be against the public interest. Therefore, it should not be passed. In the past two weeks I have discussed it with at least a dozen of my neighbors and friends, not one of them knew of it. No publicity has been given to it. Not one of those I talked to felt it was worthy of consideration, let alone enactment. When I realized that every one I talked to was 100 percent against it. I felt I should at least write you, so you would know how I feel an enlightened public would react once they knew this type of legislation had been "put over" on them.

First: This bill while intended to prohibit large sums of money from being taken out of the country for the purchase of drugs (a worthy objective in and of itself) would have practically no chance of correcting that evil. Just as illegal Mexicans cannot be stopped from entering the U.S. apparently, even with an increasing attempt at enforcement, the few criminals whom the government would seek in the drug business is so fantastic, the criminal would go to all possible risk

to get the drugs, and just seeking to restrict his taking money out of the country would not even be a serious challenge to a clever crook. So don't kid yourself. You'll have to have any army of persons to get a minimum of success, and I'll bet you would not even get that.

Now look at the other side of the attempted inforcement. It will become very burdensome, and a terriffic nuisance and headache for the average law abiding citizen who wants to take his personal funds outside the country for his personal enjoyment or lawful business reasons. He, as I have done, may want to visit for weeks or a few months a foreign country. He, as I understand the bill, would be forced to submit paper work, or subject himself to investigation and inspection. Can you conceive any better program for an ever increasing horde of enthusiastic bureaucrats to pester the life out of John Q. Public, who merely wants to take a trip outside the United States. Surely it should be none of the federal government's business what or how much money a traveler takes with him on a foreign trip, and at a time when we are being regulated to death, it is disgusting, sickening, and a disaster to have this type of legislation foisted on us. We would expect this from Russia, but not expect our government to build up a Berlin Wall of this kind to restrict our individual personal freedom, just to get a few "crooks."

Second: If passed, this kind of law, as I have indicated, will fail, but the federal government would not give up on it once the law is on the books. So enforcement will be an ever increasing expense which will only add to the taxes we are burdened with already. We are being taxed to death. The present Congress has just enacted the greatest excise tax on record—the tax on oil, which the public will have to pay eventually. Inflation is placing us in ever higher tax brackets, and Congress refuses to do the fair, honest thing to eliminate this kind of a tax increase because it wants to take care of every possible worthy project it can find, even when there are no funds available, only deficits, to meet the anticipated expense. The dollar is almost worthless, so instead of spending more of our taxpayers' money just to get a few crooks, see what you can do to relieve us of *outrageous* taxes. I see no signs that Congress is attempting to cut spending, only seeking new means to hire more federal employees and spend more of the public's money on such projects as this bill.

So, I plead with your committee to first protect our personal prized freedom, and, second, to relieve us of the unnecessary expense involved by using your good judgment and practical wisdom to defeat the passage of this bill. It will be a bright day, one of the unusual ones, during these troublesome times, if you will do this for our citizens and for our country.

Sincerely yours,

HARRY S. FLYNN.

GENERAL AQUADYNE, INC.,
Santa Barbara, Calif., March 17, 1980.

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: Since I am unable to present my testimony for H.R. 5961 in person, I would appreciate your acceptance of this letter as my testimony opposing the passage of H.R. 5961.

This bill violates the Fourth Amendment by authorizing warrantless searches and seizures, not for contraband, but for 'monetary instruments'. This bill is not a drug bill and does not mention drugs or drug related activity.

I have already sent a telex to each member of the House Banking Committee in February indicating my opposition to the passage of this bill.

I cannot urge you strongly enough to include my testimony in the record of the hearing opposing the passage of this 'monetary' control device.

Sincerely,

ALICE B. DOUGLAS,
Vice President.

SAN ANTONIO, TEX., *April 3, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE VANIK: I hereby request that the following comments be made a part of the record of the Trade Subcommittee of the House Ways

and Means Committee on Apr. 17 in room 334 of the Cannon House Office Bldg.

Regarding H.R. #5961 proposed by John LaFalce, N.Y. I wish to protest against this legislation. It is ridiculous to me to have such restrictions on personal money going in and out of the country.

It is another freedom curtailed the freedom to come and go without harassment and inspection and the entanglement of endless bureaucratic red tape.

I am astonished that a person like Bert Lance can manipulate millions of dollars and because of his high connections can walk away from the courts but an ordinary citizen will not be able to vacation in Mexico without written permission to carry $5,000.

The next step I anticipate is the issuance of identity cards to cross state lines.

You cannot convince me this is being done to control drug traffic. After all these years with the drug problem in the U.S. there has to be a power structure behind all the trafficing. Placing every citizen under scrutiny who wishes to leave or enter the U.S. with his personal finances is a far cry from solving the drug problem.

Maybe the Treasury Dept. and the Banking Committee are asking themselves Where has all the money gone?"—another example of trust in our public institutions.

I am aghast that you would stoop so low to add another milestone to our personal freedoms. We earn every cent, pay taxes on a sizable portion of it, watch it erode in value day after day, and now you expect us to be accountable for any small amount we may take in or out of the country. You have no right to oversee the methods or way in which we use our personal finances as long as no law is involved.

If you want to do a positive approach to the drug problem put some teeth in the law and get some crime off the streets.

A concerned citizen.

Mr. and Mrs. C. J. GOODE.

[Mailgram]

DALLAS, TEX., *April 10, 1980.*

HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE,
Longworth House Office Building,
Washington, D.C.:

I wish to protest vehemently H.R. 5961. It is one more invasion of our privacy. The reporting on other people for $100,000.00 is bounty hunting at its worst. I request that my letter of objection be entered into the record of the hearing.

R. BENEDICT HENRICK.

DALLAS, TEX., *April 14, 1980.*

HOUSE WAYS AND MEANS COMMITTEE, SUBCOMMITTEE ON TRADE,
Longworth House Office Building,
Washington, D.C.:

I, John A. Howell, of the above address, as a private citizen of the United States of America representing myself and my family, protest HR5961, the so-called drug trafficking Bill, which actually makes no mention of drugs. It is obviously a further restriction on a citizen's rights to protect his assets, besides being a violation of the Fifth Amendment to the Constitution. I further object to the bounty system of up to $250,000 reward for informing.

Please enter this letter of objection in the record of the hearing to be held on April 17, 1980.

JOHN A. HOWELL.

SAN DIEGO, CALIF., *April 8, 1980.*

HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE,
Longworth House Office Building,
Washington, D.C.

GENTLEMEN: I want you to kill H.R. 5961. I request you enter this letter into the record of the hearing.

JOHN F. HUMPHREY.

ST. ALBANS, W. VA., *March 8, 1980.*

Hon. JOHN M. MARTIN, JR.,
Longworth House Office Building,
Washington, D.C.

DEAR MR. MARTIN: I understand your subcommittee is to conduct hearings on this bill starting March 17, 1980. Would you please include my comments as follows in the record:

1. I have had personal experience with SEC interference in my attempts to protect my hard-earned assets from the erosion of government induced inflation. If you will examine the complete record vs SEC vs E. C. Harwood you will discover that the bureaucrats do not have the interests of the citizens in mind when they attack. See attached summary of SEC vs E. C. Harwood.

2. HR. 5961 is yet another attempt by the Treasury Dept. to gain further legal control over the private lives of the citizens. We are already saddled with a maze of regulations imposed by the Treasury's IRS division on our freedom to manage our own affairs.

Although introduced under the guise of drug control, I understand that HR. 5961 really involves instead control of our monetary assets. If the Treasury Dept. wants more legal authority to control drug traffic, that's fine, but please do not give them any more control of our personal fiscal affairs.

3. My strong request is to kill and bury HR. 5961 in your sub-committee.

Thank you for your consideration

Sincerely,

FRANKLIN JOHNSTON.

[From the Phoenix Economic Bulletin, February 1980]

To: All Who Had Invested in Swiss Entitles Managed by Mondial Commercial, Limited.

Early in 1976, when the U.S. Treasury's "bear" raid on the world markets for gold was most effective, the SEC scheduled a complete liquidation of all the Swiss entities for the summer of 1976 when gold and gold stocks were near their lows for recent years. If such liquidation had been accomplished, the results would have been catastrophic for the investors. Not only would their gold and gold-related assets have been sold at panic prices, but also they would not have received until months or possibly years later the proceeds in continually depreciating dollars.

Such a traumatic experience no doubt would have discouraged most of the investors. Probably few would have reinvested their shrunken funds in gold and gold-related assets, which had risen greatly from the lows by the time investors would have received their dollar proceeds from a necessarily protracted liquidation.

Having foreseen the probable intentions of the SEC before they initiated Court action in the United Sttaes, I was able to begin proceedings in a Swiss Court that sequestered the bearer stock of Mondial in the custody of the Lugano Court. The SEC endeavored to have me convicted of contempt of the U.S. Court, but was unsuccessful because the action in Switzerland was begun a few hours *before* the SEC had gone to the U.S. Court.

The net result was that the planned liquidation was blocked. The Judge of the Lugano Court stood his ground despite apparent pressure from the Swiss bureaucracy in Berne, which had capitulated, quite improperly I believe, to the urgings of the SEC.

In the meantime, all my sources of funds, even including a Swiss safe deposit box, were blocked. At one point my wife and I had available only about 3,000 Swiss francs. Funds were badly needed to maintain my Court action in Lugano and to assist both the RLIC Protective Committee and AIER in paying legal fees in the United States.

Then the magnificent financial support that most of you provided began to come in response to appeals in Phoenix Economic Bulletin. For three years you continued to contribute the financial means of carrying on the battle. I regard that as the finest tribute imaginable to the reputation AIER had acquired over

the four decades of its existence. More than I know how to express, I am grateful to you for the essential support you provided that has made possible fulfillment of my obvious duty to you, as well as survival of my life work, AIER, and protection of your own financial health.

The battle with the SEC has ended. Not only were all allegations against me terminated with prejudice to the SEC, but also the original Court-ordered five-year supervision over AIER's selection of Trustees, etc., was ended in the spring of 1979 after a battle of more than three years.

OUTCOME FOR THE MONDIAL ENTITIES

The Austrian Gold Coins Subaccount was liquidated, not by sale of the coins in the summer of 1976 but by distributing the coins. Result: no loss to investors other than a fractional increase in the annual fees attributable to the auditor's excessive (in my opinion) charges, which were slightly greater than Mondial's would have been. Of course, the investors now have very large gains, 300 to 500 percent if they have retained their coins. I believe that gold and gold-related assets should be retained, regardless of short-term price fluctuations until the United States returns to sound money; i. e., some form of the gold standard.

The Sovereign Gold Coins Subaccount was liquidated by returning sovereigns to the investors. The small deficiency indicated by the auditors at one time is expected to be covered by special arrangements to provide the full distribution of the sovereigns to the investors within several months when legal complications in Switzerland are resolved. Thus the very large gains for those who have retained their coins, 500 to 700 percent, may be slightly increased.

The Sovereign Contracts Subaccount was liquidated by distributing the assets, primarily gold stocks, to the investors. Unless they unwisely sold those stocks, they are better off today than if the contracts had not been terminated by force majeure.

The MAUSA Subaccount was liquidated, largely in kind by distributing gold bullion, gold coins, and gold stocks. At the conclusion of the distributions, the investors had all that their contracts entitled them to (i.e., a pro rata share of the assets, but not exceeding the MAU value they originally invested less one percent). Now the gold stocks values and greatly increased dividends provide them substantially more than their contracts would have enabled them to claim if the contracts had been continued. Their profits now are 300 to 500 percent.

The MAUSC Subaccount was liquidated by distributing the assets, primarily gold stocks, to the investors. Unless they unwisely sold those stocks, they are better off today than if the contracts had not been terminated by force majeure.

After protracted legal efforts both Subaccount Monte Sole No. 2 and Subaccount Monte Sole No. 3 as well as the direct reserved life income account of Progress Foundation remain intact. The gold stock dividends in these accounts are at new peaks (some more than doubled), and the investors will receive their expected benefits.

The Euro-Swiss Franc Loan investors, a relatively small account, will receive all of their principal in Swiss francs and interest at the specified rate.[1]

Some of you have written to me inquiring whether or not all of my personal legal and related costs have been covered. I appreciate the concern indicated, but I now have no need to recover all that was spent for such purposes. I should much prefer that any additional funds you contribute go to AIER so that you can obtain the benefit of your tax deductions and AIER will be further strengthened financially. I suggest that you contribute to AIER whatever modest percentage of your now large gains seems appropriate. All who have very large gains might well consider using such assets for Charitable Remaineder Unitrusts thereby avoiding capital gains taxes and minimizing both current income taxes and taxes on their estates. (See the enclosed description of CRUs.) By that means, the evidently destructive intentions of the SEC may be overcome and AIER can better provide the service to the Nation that the Institute is prepared to render.

Sincerely,

E. C. HARWOOD.

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[1] Some investors were given improper advice by AIC to submit claims to Mondial. Such useless claims have delayed and somewhat reduced funds available for final settlements, which can be expedited if such claims are withdrawn. See the enclosed memo.

[Telegram]

ANCHORAGE, ALASKA, *April 16, 1980.*

HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE,
Longworth House Office Building,
Washington, D.C.:

I absolutely protest consideration of HR5961. Patriotic US citizens must not be restricted in order to regulate dope offenders.

Please enter this letter in record of hearing.

ELSON N. KENDALL.

KALAMAZOO, MICH., *March 12, 1980.*

JOHN M. MARTIN, Jr.,
Ways and Means Committee, Chief Counsel, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: Legislation such as HR 5961 as it is now written has no place in a republic! This bill reminds one of Nazi Germany or, perhaps, Russia; but not the United States or America.

Or is Big Brother's 1984 already upon us?

Please include my objection in the testimony against this Un-American legisiation.

Sincerely yours,

H. J. KRUSKA, D.D.S.

[Mailgram]

KALAMAZOO, MICH., *April 14, 1980.*

HOUSE WAYS MEANS SUBCOMMITTEE ON TRADE,
Longworth House Office Building,
Washington, D.C.

DEAR SIR: Request the so-called "Drug Bill" or HR 5961 and related Senate bills be killed and that my letter of objection be entered into the records of the hearing.

H. J. KRUSKA.

BUFFALO, N.Y., *April 4, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN VANIK: I am writing in regard to House Resolution 5961, an amendment to the Bank Secrecy Act of 1970, which on February 27, 1980 was voted overwhelmingly by the House Banking Committee to report to the full House for a vote. This bill was introduced by the Honorable John J. LaFalce (a David Rockefeller protege) of the 36th Congressional District, New York. This bill is allegedly aimed at drug control, however, nowhere does it mention this subject. House Resolution 5961 carries the potential for causing extensive damage to our civil liberties and economy. In my opinion, its major objective is money control.

I am vehemently opposed to this hideous bill. I would like my comments entered into the record of the hearing that will be held on House Resolution 5961 on April 17, 1980.

Thank you for your attention to this matter. Your comments would be greatly appreciated.

Sincerely,

MICHAEL KUZMA.

[Mailgram]

HALLANDALE, FLA., *April 10, 1980.*

HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE,
Longworth House Office Building, Washington, D.C.:

I wish to express objection to bill H.R. 5961 and request this bill be killed. My letter of objection to be entered into the records of the hearing.

SOL LEHRMAN.

[Telegram]

BELMONT, MASS., *April 17, 1980.*

CHAIRMAN,
House Ways and Means Trade Subcommittee,
Washington, D.C.:

I am opposed to H.R. 5961. Enter my protest into the record.

JOHN MAGUIRE.

[Mailgram]

CINCINNATI, OHIO, *April 15, 1980.*

HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE,
Longworth Office Building,
Washington, D.C.:

For official record, concerning H.R. 5961. We object to H.R. 5961 as a vicious attempt to prevent us taking funds in and out of the country with provisions for strip and search at airports but still disguised as a drug bill.

DAVID MCCARTHY, M.D.

STATEMENT OF HON. LARRY P. MCDONALD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, let me begin by commending you for holding these hearings on H.R. 5961. When such fundamental liberties as those contained in the Fourth Amendment to the Constitution are so broadly affected as they are in this bill, to proceed without an extensive record would have been a serious mistake and a breach of proper legislative procedure by this Body. Let us hope continued caution will be exerted as this matter proceeds, if indeed it should proceed at all.

In the drafting of any legislation this country, the government has a burden to overcome, a burden of enormous dimensions, before it ever can infringe upon a constitutional liberty. No matter what particular end a law may pursue it is never raised above the highest ideal of this Republic, individual liberty. Any action by government which is constitutionally gray must demonstrate convincingly that it is wholly justified and needed; that in fact it is the best vehicle and the only vehicle which will accomplish the government's end and that there are no other vehicles to accomplish its end which will impact less on the liberties of the people. These are the most basic elementary ABC's of constitutional law. Yet there seems to be a total lack of understanding of even these most basic principles in the consideration of H.R. 5961.

Much has been made of the effect this will have on drug trafficking. The sincerity of this claim is drawn into serious question, though. We as a government have failed to act with convincing vigor with the enforcement procedures already in existence. Stiffer sentences combined with more aggressive prosecution and investigation are needed before we can make the claim that all is being done to solve our problems and that we need new avenues of attack.

The answer to the question, have we met our burden of proof as a government on H.R. 5961, must be answered in the negative. The claim that this will aid our law enforcement officers does not surmount the hurdle set up by liberty and justify warrantless searches for broadly defined monetary instruments with only a mere reasonable cause, and not a probable cause as a basis for proceeding. We as a nation are going around our proverbial elbows to get to our thumbs, all at the expense of constitutional liberty and freedom of movement by our entire population. Certainly there is a better way. All of this also does not even begin to consider the precedents which are being made and the future action this bill will allow. For there are Members of the Banking Committee who, in their reports, indicate the eyes of the government are not solely on drug trafficking but also on a host of other areas of activity. Thorough examination of all the areas impacted should be considered before we implement such a major disruption of the people's freedoms.

One of the finest analysis of H.R. 5961 was sent to me by Mr. C. V. Myers. Editor and Publisher of the "Myers' Finance and Energy Report." His analysis seems to strike at the very heart of the matters which most need our attention. He states:

"1. This bill is hypocritical in that it pretends it is something that it is not. The verbally stated purpose is to help control drug traffic. No where does this bill make mention of its purpose. The real purpose, therefore, becomes suspect.

"2. H.R. 5961 is hypocritical because its effect is control or partial control of money movements, but it avoids stating such purposes.

"3. It is a bad example for the American people because of its use of subterfuge. If the government can deceive its people, we can expect the people to think that it is only fair game to deceive their government.

"4. H.R. 5961 will have little effect. If smugglers can import drugs in massive quantities, they will certainly find a convenient way to import or export cash.

"5. The bill attacks a fundamental freedom inherent in the Constitution—the right of all persons to use or move their legally-gotten wealth at will.

"6. This measure puts in place the machinery necessary for foreign exchange controls; but it does so slyly, under the guise of drug control. If foreign exchange controls are what the government wants, then let it frame a bill that openly says so."

In conclusion, this is the kind of legislation that has already caused a loss of confidence in government. The American people have emphatically shown that they are fed-up with being fooled. Let us hope this Committee sees fit to recommend this bill be terminated immediately and that other alternatives be explored to combat drug trafficking.

Thank you.

HOUSTON, TEX., *April 12, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. VANIK: I am writing you to use your influence to kill H.R. 5961. In the hearing on this bill scheduled for this Thursday, April 17, you will surely recognize the unfairness, and un-American approach to solving so-called "Drug" problems.

I should appreciate these comments of mine being entered into the record of the hearing.

Very sincerely,

MRS. HELEN MIMS.

ORANGE, VA., *March 9, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

I would like to submit the following written testimony on H.R. 5961 to be heard by the Trade Subcommittee on March 17, 1980. This testimony is personal representing only my views.

I oppose H.R. 5961 because:

1. To date hearings have been inadequate because they have been conducted very fast with the majority of witnesses heard coming from the administration who favor the bill.

2. The bill allows searches without a warrant thus violating the 4th Amendment.

3. The Banking Committee heard no testimony covering the economic aspects of the bill.

4. Nowhere in the bill can I find mentioned the word "drugs"; so the end result is not a drug bill, but instead paves the way for very strong foreign exchange controls. History has proven that controls produce in the long run more chaos; and if you could poll your constituents they prefer to make their own decisions and will make far better decisions than any local, state or federal committee.

Sincerely yours,

DONALD R. OBER.

CINCINNATI, OHIO, *April 4, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR CHAIRMAN VANIK: As a newsletter publisher, I've been informed that your Committee will head and/or enter into the record objections to H.R. 5961.

Please let this stand as my request to enter into the record my objections to H.R. 5961. I might also add that the related Bills in the Senate will be objected to by myself, as a publisher, and other publishers as well. We have the support of several key Senators to help block this Bill in the Senate, as it is not what it purports to be on its face—and thereby represents an attempt to disenfranchise the American people through deception.

Please consider the following regarding H.R. 5961:

1. Due to Carter Administration deceptive tactics, inadequate and one-sided hearings have been held on this Bill up to this time. Only those who favor the Bill were allowed to be heard up to this time due to the speed with which the Bill was rushed through the House and the various Committees. (This alone should serve as a "red flag" that something is amiss.)

2. The Bill violates the Fourth Amendment of the Constitution, by authorizing warrantless searches and seizures for monetary instruments. Monetary instruments heretofore have *NOT* been considered as contraband. I have thousands of subscribers across the United States who transfer capital in this manner, and such transportation is an inherently innocent activity by tax-paying, middle-class Americans.

3. The Banking Committee heard no testimony on the economic and financial consequences of this Bill.

4. The Bill does not even mention its purported purpose (according to executive branch officials). All the drafts that I have seen do not even mention the word "drugs." How can it be that the purpose of this Bill is to control drugs, when in fact drugs are not mentioned, and monetary instruments are mentioned. You can't control drugs through terminating the perfectly legal transactions of tens of thousands (probably hundreds of thousands) of tax-paying Americans who wish to be able to do business overseas.

5. The concept of one citizen informing on another is basically undemocratic and repugnant to most citizens. There is no reason to offer a bounty in an attempt to make Federal Financial Police out of one's neighbors, business associates, and friends. This is a "divide and conquer" technique, that is being used to destabilize our great country in this and many other areas. For example, the legal and accounting profession are now being used by the Securities and Exchange Commission as Federal Financial Police, thereby violating the supposedly sacrosanct attorney-client privilege.

Again, let me request this objection be entered into the record of the hearing. May I also request that a copy of the record of the hearing be made available to me in due course.

Sincerely,

LAWRENCE T. PATTERSON,
Publisher, Patterson Strategy Letter.

GREENLAWN, N.Y., *April 7, 1980.*

HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE,
Longworth House Office Building,
Washington, D.C.

Hon. TRADE SUBCOMMITTEE MEMBERS: In a bill introduced ostensibly to control illict drug traffic $5,000.00 or $10,000.00 are very small amounts to be considered as contraband, or to be a deterrent against participation in such traffic. Customs officers could search American citizens without warrants for such contraband, nor would there need be any suspicion of drugs. That the Bill provides for a bounty system to reward informers, as one would expect in a totalitarian regime, and criminal penalties for failing to file capital export and import forms, suggests it is an attempt by Treasury to tighten foreign exchange regulations and, to implement them, the Administration appears eager to obtain Congressional approval for typical police-state powers.

Today, if you are retired on a small fixed income, you can't afford to have a small savings account because the interest might put you in a tax-bracket and you then would be worse off than a welfare recipient. Senator John Heinz, "may his tribe increase," noted in one of his newsletters that, "It's Your Interest: You Should Keep It"—pointing out that Japanese people save their money at a rate five times greater than we Americans do. That is why Japan has more money or capital to invest in business expansion and modernization. That is one of the

reasons why Japan's inflation rate is lower than ours, and why Japanese business is expanding and cutting into American businesses and jobs. "It's time America stops treating savings as a vice to be taxed away, and begins treating them as a virtue to be encouraged."

The Administration should not expect Americans to believe it is sincere about fighting inflation when it is more culpable than OPEC for the awesome dollar drain on our economy. I submit some of its onerous omissions in support of this statement: (1) It has contrived through the FTC to stifle one of our strongest industries, the textile, whose export capabilities could more than offset our unfavorable trade balance. (2) Despite all the lip service paid to conservation by President Carter, Congress and the EPA, the mass collecting and recycling of discarded oil is still, unfortunately, not part of the nation's overall program to conserve petroleum. Lubricating oil does not wear out, just gets dirty and can be preserved and recycled. It requires much less energy to recycle used oil than it does to make the original oil product from crude. This scientific truth is buried in numerous U.S. government publications. But, today, a mere 5 percent of this hidden asset is being re-refined. This "oversight" is a serious one. If all our available waste oil was recycled, U.S. petroleum imports could be reduced appreciably—see enclosure, "the crankcase"; (3) President Carter recently signed a directive to drastically reduce revenue to the U.S. on imported sugar which will result in widening our unfavorable Trade Balance.

Neither the foregoing nor the latest Wall Street Journel (2/29/80) news that, "The merchandise trade deficit widened in January to $4.76 billion, the largest since February 1978, although oil imports declined. The trade gap was $4.07 billion in December and $2.73 billion in November," are anything but portents of imminent economic chaos. They certainly cannot be classified as efforts to reduce trade deficit.

So, also, with H.R. 5961. To classify it, as a bill to control illicit drug traffic, is a mockery and a sham.

The only way to save our country is to end deficit spending, cut taxes, back the dollar with gold and return, through deregulation, to a free economy.

We cannot afford to allow H.R. 5961 to further erode our freedoms. It will not serve to stop transfers of large sums of money involved in illicit narcotics traffic and knowledgable people, both in and out of government, know this.

Therefore, I strongly urge that you consider the above information and motivated by a determination to protect the welfare of Our Country and preserve the Republic, will reject H.R. 5961.

I respectfully request that this letter of objection be entered into your Record of the Hearing on H.R. 5962.

Respectfully,

FRANCIS X. SABO.

W. D. SCHOCK CORP.,
Santa Ana, Calif., April 10, 1980.

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee,
U.S. House of Representatives, Washington, D.C.

DEAR HONORABLE VANIK: I would like my comments on Bill H.R. 5961 to be entered into the record of the hearing.

It is my feeling that this bill is a totalitarian measure and carries the potential for causing extensive damage to our civil liberties and economy.

Our freedom is in jeopardy! If you are prevented from transporting money out of the country, you are really prevented from leaving the country—as surely as the dissident in Russia.

Bill H.R. 5961 has the greatest potential for the destruction of economic freedom, that I have seen.

Sincerely yours,

W. D. SCHOCK.

SCHOLZEN PRODUCTS COMPANY, INC.,
Hurricane, Utah, March 7, 1980.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR HONORABLE CHIEF MARTIN: H.R. 5961 will be referred to the House Ways and Means Trade Sub-Committee on March 17, 1980. This bill is a direct

infringement of our civil liberties. It is being rushed through Congress under the misleading title of "The Drug Bill" designed to curb drug trafficking—even though drugs are not even mentioned. It will allow customs officers to search for monetary instruments without probable cause. I object—for the following reasons:

1. One-sided hearings have been heard. (The Administration's side.)
2. The bill violates Fourth Amendment rights by authorizing warrantless searches and seizures.
3. The Banking Committee heard no testimony on economic and financial consequences of the bill.
4. The language of this bill does not constitute a drug bill.

This bill is a totalitarian measure. It sounds like restrains that would come out of Kremlin; not responsible legislation coming from the Capitol of the greatest bastian of Freedom on earth—the U.S.A. Registration and control are Siamese twins. Let one enter and the other is right behind.

I urge you to vote agains this bill! I ask that my written testimony of objection to this bill be included in the record.

Sincerely,

NICK C. SCHOLZEN,
Vice President.

[Mailgram]

SANTA FE, N. MEX., *April 12, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR SIR: We are unalterably opposed to H.R. 5961 and want our comments entered into the record of your hearing. As a wholey unjustified example of Big Brothers further invasion of individual privacy and unwarranted intimidation of honest and loyal Americans. Neither will H.R. 5961 in any way be effective in curbing international crime as its sponsors naively claim. In the cause of liberty please kill this bill.

RODMAN AND JOYCE SHARP.

SHELBUD PRODUCTS CORP.,
New Rochelle, N.Y., April 17, 1980.

Hon. CHARLES VANIK,
Ways and Means Committee,
U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE VANIK: We would apppreciate your entering our protest for enacting H.R. 5961. It is a violation of the rights of honest Americans, and has been put on the books falsely.

Sincerely,

FRED KROLL.

[Mailgram]

OSCEOLA, WIS., *April 8, 1980.*

CHAIRMAN AND MEMBERS,
House Ways and Means Trade Subcommittee, Longworth House Office Building, Washington, D.C.:

Please kill bill HR 5961, it's unamerican costly to administer not good for our country. Please put my objection in record of hearing.

ANNE V. SPEIRS.

HOUSTON, TEX., *April 12, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE VANIK: I am 100 percent against H.R. 5961 (amendment to Bank Secrecy Act of 1970).

It is an attack on the rights of Americans who through good personal management have so far weathered exorbitant income taxes, high prices, and inflation and still have a dwindling nest egg to protect.

That this government is financially strapped is not the fault of the individual citizen. He has not been consulted on the fool hardy ways in which it has run itself into debt and so should not be required to hold his personal, private funds (not contraband) in this country to protect an irresponsible government.

Surely this bill will be killed for I cannot believe that American Congressmen (of whatever stripe) will vote into law a measure which provides for bounties to be paid to "Informers". Heaven forbid! This is America!

If this is a drug control bill, as is claimed, it should be rewritten to specifically apply.

I would appreciate my protest being entered into the record.

Yours in earnest,

Mrs. W. M. Standish.

Grants Pass, Oreg., *April 3, 1980.*

Hon. Charles Vanik,

Chairman, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

Mr. Chairman: I desire that the following remarks in re HR 5961 be entered into the record of the Hearing on it that your Subcommittee will hold on the 17th inst.

There are approximately 30–40,000 Americans presently employed overseas, together, in thousands of cases, with their families. Restrictions on their right to remove large sums of money from these United States to locations abroad might well constitute a serious problem for them. (As one who has spent many years overseas, I can address this point with some authority.)

By the same token, Companies and Corporations may well wish to send money both from the States to subsidiaries in other Countries, and from them to offices here. Hamstringing American Business Interests that are bringing Profits home, paying Taxes to the Federal and State Governments, and contributing to Employment of Americans is hardly good Economic Policy!

A third factor to consider is, of course, the Foreign Firms whose subsidiaries are in the States, and who have the same funds-transfer requirements as their American colleagues.

To suggest that the Bill would not interdict these transactions but merely complicate them is to beg a serious point. Inflation cannot be either reduced or controlled by requiring businesses to process heavy loads of additional unnecessary paperwork and combat further inroads on their flexibility and capacity for prompt response to emergencies!

Were I in your situation, Mr. Chairman, I would devote some further consideration to History. In every instance where Government has embarked upon a course of deliberate inflation of the currency, it has also attempted to disguise its inability to correct the problem by heaping on the bowed back of the Taxpayer unreasonable amounts of Regulatory and Oppressive legislation. The result has been the death of the Régime . . . and of many Government Officials and Legislators. I recommend strongly that you reread:

Annals of the French Revolution, A. F. Bertrand de Moleville (London, 1800); Fiat Money Inflation in France, Andrew Dickson White Foundation for Economic Education, New York 1959; Economics in One Lesson:

What You Should Know About Inflation, Henry Hazlitt, Foundation for Economic Education (McFadden) 1965, Van Nostrand, New York 1965; The Law: Economic Harmonies Frédéric Bastiat Foundation for Economic Education 1964, Van Nostrand 1964.

You may find it profitable also to review Herbert Spencer's The Man vs. The State.

Whether these United States can pull themselves up, out of the catastrophe of Inflation and Economic Chicanery into which the past seven Administrations (with Congressional coöperation) have flung them may be still an open question. If we do, we will be the only Nation in History to have managed such a recovery . . . short of Revolution and Terror.

Let there be no doubt, however, Mr. Chairman, that HR 5961 and all similar measures must fail of their pretended objective. Far from a means to the correction of Inflation, they are but yet another—and ominously effective—step toward the yawning chasm of Rebellion and the Fall of the Republic.

As one loyal to the Republic, Mr. Chairman, I urge you to oppose HR 5961 with every resource at your disposal.

David Joseph Stevens-Allen.

PENFIELD, N.Y., *April 11, 1980.*

Hon. CHARLES VANIK,
Chairman, Trade Subcommittee, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. VANIK: This is further to mine of Mar 13/80 to all members of the House Committee on Ways and Means asking that this bill be rejected. Copy of that letter is attached.

The Honorable Ron Paul M.C. and Representative Al Ullman were kind enough to reply to my letter informing me that there had been an outpouring of concern about this bill, so much so, that it was decided to hold a public hearing on it April 17th, 1980. I would ask that my previous letter and my comments here be entered into the record of the hearing.

Also I am sending copy of this letter to both Mr. Paul and Mr. Ullman thanking them for their concern and their response to my letter; and to a few other concerned citizens.

There is not much I can add to my previous letter on this bill except that once again I would ask that it be rejected. But hopefully it would be rejected for only one very specific reason.

To be perfectly honest, in my opinion, even if it should be passed it would not be that earthshaking. The way things have been going over the past seven years or so for the American people what would just one more such bill mean to them. They are so overloaded and overburdened now with such bills they would hardly notice it.

If on the other hand the Committee should reject it just because of this sudden public outcry and nothing else, what good would that do? The Trilateral Commission would I am sure easily come up with some other supterfuge to get it passed some other way, quietly; even if it took a presidential decree of some kind: They seem to have complete control of the presidency anyway.

It would only mean something if the Committee rejected it on the basis that finally they were calling a halt to the destructive policies of the Trilateral Commission. That they were taking the courageous step of notifying the commission that no longer would they stand for their further deprivations. That such destructive acts had gone on long enough and should come to a stop. That they are determined now and henceforth to take a stand to protect the rights of their 200 plus millions constituents.

The Trilateral Commission has admitted it themselves: there are only two real obstacles to their final goal for control of America; our Constitution and our Congress. For the former they have already prepared, after forty attempts, a new constitution which they call 'The New States Constitution'. For the latter they are having much difficulty but are working on it steadily. It comes down to a question of numbers: the commission are actually few in number even compared to our congress and of course insignificant in number when compared to our huge population. This is why they have to move so carefully and secretively, they don't dare rile the natives. That is their achilles heal. If the congress right here and now decided to do not one more thing to help them and in fact if they started right now to reverse the process the Trilateral Commission would fade away like a mist, and their programs would collapse like a deflated balloon. And they know it.

If this could possibly happen then once more this country could start off on the road to health, and in a healthy condition it could do more for the world both developed and undeveloped than it could ever do under the shackles of a One World government.

There is one very big problem with the so-called Bilderbergers and the CFRs and the Trilaterals and that is that they are guided and run by what they consider to be geniuses. These geniuses have decided that they know best how not only America but the whole world should be run, and that they can't leave this very 'difficult' task to the lowly peasants, who are just plain stupid. They have the knack of disregarding embarrassing, to them, facts such as that America was made great not by geniuses but by little people, little peasants, with great determination and drive and most importantly freedom.

We all know the trouble with so-called geniuses. They are all in the head, in the thinking, in the planning, in the conniving and in the conspiring. Put any one of them into a everyday practical working situation and they would flunk out. Replace all those hard working, adaptable, free peasants with these geniuses and America would never have gotten off the drawing boards. With my most

humble apologies to Albert Einstein whom I consider to be one of the greatest geniuses of all time, to say nothing of his gentleness and humanity and love of man and humility, when it came to putting his theories to work in building the A bomb they thought he would become their shining beacon to follow, but as it turned out he was no help at all in the practical application of his theories. His theory at least did work but 99 times out of 100 theories just don't work and neither do the geniuses.

Look what these geniuses did with socialist Russia whom their types set up in 1917 as a test showcase with other geniuses officiating. This showcase has been a disaster area ever since and in fact if it weren't for the American taxpayer (unbeknownst to him of course) it would long ago have disappeared into the mists. Look what these geniuses have already done to America with their controlled disintegration. The disintergration I'm afraid is in an uncontrolled mode. The dollar is a disaster as is the economy, but much worse then they intended or envisaged, so much as that even these geniuses don't know what to do with it. Look at our 'banana republic' inflation with 'indexing' yet that has gotten out of hand even for them, they're helpless before it. Even their destruction of small business by means of overregulation, and OSHA, IRS, SEC, FTC etc. isn't going all that well. They didn't count on the genius of our small businessman in adapting to these horrendous conditions.

And when you look at their handling of foreign relations you have to wonder at their sanity let alone their genius. It's been so calamitous that even their foreign partners think they are out of their minds. Nobody seems to know what's going on anywhere. Of course thousands of people are being killed and other thousands are suffering but that's just tough.

What a bunch of stumbling bumbling idiots they are turning out to be, and these are the people you would let get control of our once great America? Think of the disaster it could become, not so much for us but more especially for our children. And you people in Congress are the only ones who can stop all this.

This bill H.R. 5961 could be the landmark bill of all time—it could represent the turning point like the Magna Carta or the Boston Tea Party. It could be the point in time when all the carnage was finally blunted and turned around.

Good luck to you should you decide on such a course, and just one thing more—get the news out—you have the power. Let those 200 million plus constituents know and you'll have their blessing and support.

Yours truly,

CLARENCE R. TAYLOR.

CARLSBAD, CALIF., *April 7, 1980.*

GENTLEMEN: As an American Citizen I urge you to KILL bill H.R. 5961 and the related Senate bills!!!!! I request this objection be entered into the record of the hearing.

Sincerely,

(Miss) BOBBI TROUT.

CANTON, OHIO, *March 7, 1980.*

JOHN M. MARTIN, JR.,
Chief Counsel, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

MR. MARTIN: I am opposed to Bank Secrecy Act amendment Bill HR 5961 because it is a violation of my Constitutional Rights and my natural right to freedom.

Please record my dissent to this bill in the Congressional Record.

Cordially,

BOB VITALE.

LAKESIDE, MONT., *March 15, 1980.*

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR SIR: I desire that this letter be presented to the Trade Subcommittee of the House Ways and Means Committee in opposition to H.R. 5961, the Amendment to the Bank Secrecy Act of 1970.

I make this request as a concerned private citizen, in the interest of all citizens who wish to retain a modicum of privacy; otherwise, I represent no other group or organization.

I am: Royer G. Warren, Box 303, Lakeside, Montana 59922.

If a bill such as this is, in fact, designed to prevent drug trafficking into the United States, then the bill should so state in a few short words so that there is no mistaking the legal intent of the law, and so that other important individual freedoms shall not be forfeited through interpretation of this act. If the bill cannot specifically state its intent, then it should die aborning, lest it does more damage than good to the citizens of this country.

Furthermore, it would be "criminal" of the Trade Subcommittee to pass this bill to the full Committee and the House without providing for a much more comprehensive hearing than was accorded it by the House Committee on Banking, Finance and Urban Affairs, for these kinds of tactics are not the hallmark of honest men.

In addition, If I, personally, know of anyone trafficking in drugs, I'll report the fact to the Drug Enforcement Administration—No Reward Being Necessary! Why, then, is such a large sum of money suggested in the bill for rewards? It can't possibly be for encouraging honest citizens to perform their civic duty, a duty which they will perform without recompense. Perhaps such a reward would turn one trafficker against another. If so then let that reason for the reward be stated in the record of the hearings. But, in any event, let's keep such stool-pigeonism in the drug family. And, let s have the proposed act state that the drug traffic is what we're after in this case—if this is to be the case.

Sincerely,

ROYER G. WARREN.

RAPID CITY, S. DAK., *April 7, 1980.*

HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE,
Cannon Office Building,
Washington, D.C.

GENTLEMEN: The purpose of this letter is to express absolute, total and unalterable opposition to H.R. 5961, the so-called "Drug Bill" and the manner in which it was first introduced, without hearings, pro and con.

The practical effect of this proposal is to make criminals out of anyone carrying money or any other "financial instruments", not defined, for whatever purpose, a total invasion of personal privacy, ostensibly to catch a few carriers of money related to drug traffic. Outrageous!

Please enter my letter to be included into the record of this hearing and kill it. What happened to your oaths to uphold and OBEY the U.S. Constitution? The Congressmen who wrote, entered and sponsored such an outrage should be investigated by a federal Grand Jury.

H.R. 5961 is merely an attempt to expand Fed. law 91-508, a form of currency and foreign exchange controls over the drug business, a form of sumptuary legislation like the Volstead Act of 1933, an abysmal failure!

Everyone in Congress seems to worship force—a law, which equals infallible wisdom; a denial of reality. If the Congress or the state legislators had any sense of reality, they would legalize marijuana and either sell it or tax it and take an impossible enforcement task off the law enforcement agencies and the Court system. "Power tends to corrupt and absolute power absolutely corrupts." Lord Acton—British diplomat. "Of all things that profit, ego profits first." John Milton, blind English poet, circa 1550. Before you vote on H.R. 5961, look in your mirror.

Respectfully,

V. R. WASHBURN.

P.S.—What is your philosophy about government? Does the government own and control the citizens or do the citizens own and control the government as the Constitution demands?

V.R.W.

LA HABRA, CALIF., *March 14, 1980.*

Hon. CHARLES A. VANIK,
Chairman, Trade Subcommittee, Rayburn House Office Building,
Washington, D.C.

DEAR MR. VANIK: We have been shocked and angered upon learning the details of La Falce's proposed amendment to the Bank Secrecy Act, HR5961, with its "Big Brother" offer to "bounty hunters", setting our citizens one against the other. What is this, Nazi Germany?

Under the pretense of pursuing drug traffickers (not even mentioned in the amendment), this despicable proposal is another bald grab for power by Federal bureaucrats—bringing us closer to Orwell's "Animal Farm" where we won't be able to go to the toilet without permission of the "pigs"!

We are law-abiding citizens, with modest but impeccable credit and references, who pay our taxes and deeply love our country, and we think this proposal smacks of Orwell's "1984".—reporting like some school boy to the Headmaster.

This Republic is not the private preserve of the Federal bureaucracy. It is "owned" by millions of humble citizens like ourselves. The continuing erosion of individual freedoms in the name of "protecting" us from some "criminal" element (by an omniscient and omnipotent State) has reached epidemic proportions.

If we're so concerned about the movement of money across national boundaries in accordance with a "free market", then why don't we stop deficit spending, printing-press money, and reduce the disgraceful Federal Budget. Then citizens will gladly put dollars into American savings institutions and industrial plants!

We hope you will carefully consider your position on this Bill and vote against it.

Respectfully,

JAMES NORMAN WOMACK.

H.R. 6089

To prohibit until January 1, 1982, the conversion of the rates of duty on certain unwrought lead to ad valorem equivalents.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 6089, if enacted, would amend item 624.03 of the Tariff Schedules of the United States (TSUS) by restoring the specific rates of duty which were applicable for that item until January 1, 1980, and delaying until January 1, 1982, the applicability of the converted ad valorem rates of duty which are now in effect for that item. The sponsor of the bill has indicated that this delay would allow a time for a review of the converted rates in view of the rapid rise in world prices of lead which has occurred since the ad valorem rates of duty were determined.

BACKGROUND

In 1978, the United States Trade Representative[1] requested the U.S. International Trade Commission to conduct an investigation and prepare a report providing ad valorem equivalent (AVE) rates of duty for those items which were subject to specific or compound rates of duty at that time. These AVE's were to be based on a recent representative period for each item; for most items, it was the year 1976. The report on this investigation, No. 332-99,[2] listed an AVE of 5.1 percent for item 624.03 for column 1 and 10.2 percent for column 2.[3] The 5.1 percent figure was used as the basis for negotiation under the Multilateral Trade Negotiations (MTN); it was reduced to 4 percent as a result of the MTN. The present rate, which was agreed to by the United States in a bilateral agreement with Mexico, is 3.5 percent ad valorem on the value of the lead content.

During the last 2 years the price of unwrought lead has risen greatly, as general inflation and world demand have increased. The AVE based on 1978 values of imports under item 624.03 dropped to 3.5 percent and that based on 1979 imports dropped to approximately 2.2 percent. Thus, the current column 1 duty rate of 3.5 percent ad valorem on the value of the lead content has resulted in an effective increase in duty over the specific column 1 duty rate of 1.0625 cents per pound on lead content, which was in effect for item 624.03 prior to January 1, 1980.

DESCRIPTION AND USES

Lead is a soft, heavy, malleable metal that is the most corrosion resistant of the common metals. It is produced in several grades that are differentiated by the presence or absence of certain other metals. Use in battery components accounts for 55 percent of total lead consumption and use in gasoline additives, for 15 percent; use in many other products, such as pigments and cable covering, each account for a small fraction of consumption.

World demand for lead has recently jumped to unexpected levels. There are several reasons for this. The U.S.S.R. has been purchasing greatly increased quantities of unwrought lead in recent years. Also, the production of tetraethyl lead, which is used as an additive in gasoline, has not declined as rapidly as was expected. The recent use of larger amounts of antimony in combination with the lead in batteries has made the recycling of this lead less feasible, given current costs and procedures for such recycling. However, the trend of rising prices seems to have leveled off, and prices have fallen somewhat in the last 2 months.

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[1] Formerly the Special Representative for Trade Negotiations.

[2] Conversion of Specific and Compound Rates of Duty to Ad Valorem Rates, No. 332-99, USIT Publications 896, July 1978.

[3] The col. 2 rates apply to the products of the Communist countries designated in TSUS general headnote 3(f). The col 1 rates apply to the products of all other countries.

TARIFF TREATMENT

As of January 1, 1980, the rates of duty on item 624.03 became 3.5 percent ad valorem on the value of the lead content for column 1 and 10.0 percent ad valorem on the value of the lead content for column 2. The previous column 1 rate of 1.0625 cents per pound on lead content had been in effect from June 6, 1951, to January 1, 1980. The previous column 2 rate of duty was 2.125 cents per pound. The MTN agreement will not reduce the duty any further. This item is not eligible for duty-free treatment under the Generalized System of Preferences (GSP). However, a petition from Mexico for GSP treatment of lead alloys (TSUS item 624.0330) is under consideration, and the U.S. International Trade Commission has recently concluded an investigation on this matter.

STRUCTURE OF THE DOMESTIC INDUSTRY

There are 5 firms that produce primary unwrought lead and more than 100 firms that produce secondary unwrought lead; 3 of the secondary firms account for more than half of the secondary production. The primary producers are located in Missouri, Nebraska, Idaho, Montana, and Texas. The secondary producers have plants located throughout the nation, so as to be near the sources of their raw material, lead scrap. Prominent producers include Amax, Inc.; Asarco, Inc.; the Bunker Hill Co., a subsidiary of Gulf Resources & Chemical Corps.; RSR Corp.; and St. Joe Minerals Corp.

DOMESTIC PRODUCTION

Domestic production of unwrought lead by quantity (lead content) and value, acording to the U.S. Bureau of Mines, has been as follows:

Year	Quantity (thousand tons)	Value (millions)
1975	1,188	$550
1976	1,378	637
1977	1,337	818
1978	1,338	900
1979	1,330	1,400

IMPORTS

U.S. imports for consumption of unwrought lead in 1975–79 are shown in the following table:

UNWROUGHT LEAD: U.S. IMPORTS FOR CONSUMPTION, BY PRINCIPAL SOURCES, 1975–78, JANUARY–NOVEMBER 1978, AND JANUARY–NOVEMBER 1979

	1975	1976	1977	1978	January–November 1978	January–November 1979
	Quantity (short tons)					
Mexico	28,728	44,290	79,123	88,420	81,017	77,359
Canada	30,687	47,612	83,153	77,578	71,705	70,299
Peru	19,876	19,733	33,546	28,357	26,104	16,759
All other	19,763	30,345	52,174	54,112	52,301	19,763
Total	99,054	141,980	247,996	248,467	231,127	184,181
	Value (thousands)					
Mexico	$11,073	$17,090	$44,182	$54,818	$49,646	$72,117
Canada	14,659	21,659	51,749	53,224	48,713	50,333
Peru	9,022	7,877	18,674	17,005	15,482	16,006
Other	11,950	13,619	32,123	62,819	42,241	30,167
Total	46,704	60,245	146,728	169,866	156,082	188,623

Source: Compiled from official statistics of the U.S. Department of Commerce.

CONSUMPTION

Domestic consumption of unwrought lead was 1.30 million short tons in 1975, 1.49 million tons in 1976, 1.58 million tons in 1977, 1.43 million tons in 1978, and 1.34 million tons (etsimated) in 1979, according to official statistics compiled by the U.S. Bureau of Mines.

POTENTIAL LOSS OF REVENUE

On the basis of 1979 imports of unwrought lead and the current and proposed rates of duty, it is estimated that enactment would result in a loss of customs revenue of $2.7 million annually for the duration of this legislation. This would occur because the proposed specific rates of duty would not result in the revenue which the current rates of duty would when combined with current high prices of lead.

TECHNICAL COMMENTS

The bill, as drafted, is not technically accurate in that it seeks to prohibit the conversion of the rates of duty for item 624.03 to ad valorem equivalents, stating on page 2 that any conversion to ad valorem equivalents "that would, but for this Act, have taken effect on January 1, 1980, shall apply * * * after December 31, 1981" (emphasis added). This language does not seem to recognize that the ad valorem rates of duty have been in effect for item 624.03 since January 1, 1980. The original intent of the bill was to prohibit the application of these ad valorem rates until January 1, 1982. It is suggested that this can best be accomplished, without changing the substance of the legislation, by providing for an amendment to the appendix of the TSUS. It is, therefore, suggested that the bill be amended to read as follows:

A BILL To suspend until January 1, 1982, the application of the ad valorem rates of duty on certain unwrought lead

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting in numerical sequence the following new item:

"911.60	Unwrought lead (provided for in item 624.03, part 2G, schedule 6).....	1.0625¢ per lb. on lead content.	2.125¢ per lb. on lead content.	On or before 12/31/81."

Under this approach, the existing ad valorem rates of duty for item 624.03 would be superseded by the specific rates shown for item 911.69 up until December 31, 1981. On January 1, 1982, the current ad valorem rates would automatically come back into effect unless the Congress, in the interim period, extends the effective date or otherwise modifies the temporary legislation.

Since the ad valorem rates of duty are currently in effect for item 624.03, the Committee may wish to consider providing for retroactive application of the amendments made by the bill. This can be accomplished by designating the existing provision (or the provision suggested above) as "Sec. 1" and by adding the following new section 2:

"Sec. 2(a). The amendment made by the first section of this Act shall apply with respect to articles entered, or withdraw from warehouse for consumption, on or after the date of enactment of this Act.

(b) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of the enactment of this Act, the entry or withdrawal of any article to which item 624.03 of the Tariff Schedules of the United States applied and—

(1) that was made after January 1, 1980, and before the date of the enactment of this Act, and

(2) with respect to which there would have been duties other than as specified in section 1 of this Act,

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 or any other provision of law, be liquidated or reliquidated as though such entry or withdrawal had been made on the date of the enactment of this Act."

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in response to your request for the views and recommendations of this Office on H.R. 6089, as amended.

The Office of the United States Trade Representatives does not object to the enactment of H.R. 6089, as amended.

In principle, we prefer that any reduction in tariffs be accomplished in the context of trade negotiations where the President is afforded the opportunity to obtain reciprocal concessions of interest to U.S. exporters. However, we understand that overriding domestic considerations associated with this bill at this time have generated this unilateral reduction in the tariff on unwrought lead other than bullion. We support the temporary nature of this legislation which should permit us to negotiate a permanent tariff reduction with the principal supplying countries and which would afford us the opportunity to obtain reciprocal concessions. As long as our trading partners understand that this tariff reduction is a unilateral but temporary action taken for domestic reasons, our negotiating leverage, while reduced for the moment, should remain intact.

One troubling aspect of the legislation which this Office would prefer deleted is the limitation on the President's authority to modify this tariff rate once the bill is enacted. Although we have no plans to modify the tariff, we believe that legislating controls on the President's authority pertaining to the Generalized System of Preferences (GSP) or his residual tariff authority under section 124 of the Trade Act of 1974 is a dangerous precedent which could encourage similar efforts on behalf of other industries.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these comments.

STATEMENT OF HON. JOHN J. DUNCAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

I appreciate the opportunity to briefly state by opposition to the enactment of H.R. 6089, a bill that would prohibit the conversion of duty rates of unwrought lead to ad valorem equivalents. Instead, for several reasons, I believe that the recently negotiated 3.5 percent ad valorem duty should remain effective.

A return to the pre-Geneva rate of 1.0625 cents per pound—in place for over 25 years—would have a severe impact of the domestic lead industry. During the past three months, we have witnessed price reductions of 21 percent, a trend that in my judgement would be exacerbated by the enactment of H.R. 6089. Considering the cyclical nature of the lead market with its prolonged periods of low demand accompanied by low prices, such an effective would be serious indeed. It is worth noting that at the end of 1979, shipments significantly declined while inventories rose substantially. And if that is not enough, we should also remember that the Environmental Protection Agency and the Occupational Safety and Health Administration (OSHA) are demanding huge investments of capital on the part of the lead smelting and refining industry.

Consequently, I see no reason why we should make matters more difficult for the industry. After all, the 3.5 percent duty is entirely reasonable given that it is equal to the duty imposed by the European Economic Community, and lower than the duties of Mexico and Japan.

Furthermore, this rate was determined as the result of multi and bi-lateral negotiations. There is simply no need for a unilateral reduction.

In sum, Mr. Chairman, an overview of the current situation reinforces my belief that the 3.5 percent rate of duty is just and reasonable. I urge that it remain in effect so that our domestic lead industry may further strengthen its position in the world market.

Thank you.

H.R. 6269

To extend the temporary suspension of duty on doxorubicin hydrochloride until the close of June 30, 1982.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 6269, if enacted, would amend the Appendix to the Tariff Schedules of the United States (TSUS) to continue until the close of June 30, 1982, the existing suspesion of the column 1 (MFN) rate of duty on imports of doxorubicin hydrochloride. This duty suspension became effective November 8, 1977, and will expire June 30, 1980, unless extended.[1]

DESCRIPTION AND USES

Doxorubicin hydrochloride is used in the treatment of many types of cancer including: breast carcinoma, ovarian carcinoma, transitional cell bladder tumor, bronchogenic lung carcinoma, thyroid carcinoma, and soft tissue and osteogenic sarcomas; neuroblastoma and Wilms' tumor; malignant lymphomas of both Hodgkin and non-Hodgkin type; and acute lymphoblastic and acute myeloblastic leukemias. Doxorubicin hydrochloride is an antineoplastic agent which inhibits the growth of a cancer cell by interfering with its metabolic and reproductive processes. Doxorubicin hydrochloride is produced by a culture of Streptomyces peucetius of the variety caesius, a mutant microorganism. The commercial preparation is a red-orange colored crystalline powder, and is sold under the trade name Adriamycin.

TARIFF TREATMENT

Doxorubicin hydrochloride is presently classified under TSUS item 437.32 with a column 1 (MFN) rate of 5 percent ad valorem if imported in bulk form, and in TSUS item 438.02 at the same MFN rate of duty when imported in ampoules, capsules, jubes, lozenges, pills or similar forms. The column 2 rate for both items is 25 percent ad valorem. It would be classified in TSUS item 407.85, with a column 1 (MFN) rate of 1.7 cents per pound plus 12.5 percent ad valorem and a column 2 rate of 7 cents per pound plus 45 percent ad valorem, if it was made synthetically from benzenoil chemicals; however this is not believed likely to be a commercially-viable alternative.

U.S. PRODUCERS AND DOMESTIC PRODUCTION

Doxorubicin hydrochloride is not produced in the United States. Farmitalia S.p.A., a wholly-owned subsidiary of Montedison S.p.A., both located in Milan, Italy, holds the U.S. patent on doxorubicin hydrocarbon and is the only producer of the drug.

U.S. IMPORTS

U.S. imports of doxorubicin hydrochloride in 1979 were about 33,000 grams valued at about $28 million, an increase from 1976 imports of about 11,000 grams valued at approximately $10 million. All imports are supplied by Farmitalia S.p.A., Milan, Italy, The importer and U.S. distributor of doxorubicin hydrochloride is Adria Laboratories, Inc., Columbus, Ohio. Adria Laboratories is jointly owned by Hercules, Inc., Wilmington, Delaware, and Arethusa Trading Corp., New York, N.Y. The latter company is a wholly-owned subsidiary of Montedison S.p.A. Adria Laboratories markets the drug domestically under the trade name Adriamycin.

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[1] Public Law No. 95–159, sec. 3; 91 Stat. 1270.

U.S. CONSUMPTION

There is no domestic production and exports of doxorubicin hydrochloride are assumed to be negligible or nil. Accordingly, domestic consumption is approximately equal to imports.

POTENTIAL LOSS OF REVENUE

Based on an estimated value for 1979 imports, the loss of customs revenue in 1979 resulting from the present duty suspension was about $1.4 million. Future loss of revenue is expected to range from $1 5 million to $2.0 million per year.

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in response to your request for the views and recommendations of this Office on H.R. 6269, a bill "To extend the temporary suspension of duty on doxorubicin hydrochloride until the close of Junt 30, 1982."

The Office of the United States Trade Representative supports the enactment of H.R. 6269. We understand that doxorubicin hydrochloride is a unique drug used by physicians in cancer chemotherapy, and that it is not currently produced in the United States. It is also our understanding that the savings associated with a continuation of the duty suspension would be passed on to consumers of this drug.

As a matter of policy, this Office prefers that reductions of tariffs be accomplished through international trade negotiations in which the President has the opportunity to obtain reciprocal benefits for U.S. exporters. In this case, however, we believe that the economic benefits of duty-free entry of doxorubicin hydrochloride to U.S. consumers warrant the unilateral suspension of the duty.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 6269, a bill "To extend the temporary suspension of duty on doxorubicin hydrochloride until the close of June 30, 1982."

If enacted, H.R. 6269 would extend until June 30, 1982, the temporary duty suspension on imports of doxorubicin hydrochloride from countries afforded column-one tariff treatment. Imports of doxorubicin hydrochloride enter the United States under Tariff Schedule of the United States (TSUS) item 907.20 and currently are free of duty. This temporary duty suspension is scheduled to expire on June 30, 1980.

The Department of Commerce favors the extension of the duty suspension on the column-one rate of duty on imports of doxorubicin hydrochloride as proposed in H.R. 6269. The Department feels that continued duty-free entry of doxorubicin hydrochloride, one of the most widely used and most important drugs in the treatment of cancer, would benefit physicians, researchers, and cancer patients. Medical experts at the National Cancer Institute and at private cancer centers have stressed the significance and uniqueness of the drug. The bill would not discourage the development of a like product by domestic industry.

Doxorubicin hydrochloride, sold under the brand name Adriamycin, is produced exclusively by a company in Italy under a patent which prevents the drug from being manufactured in the U.S.

Moreover, there are at this time no commercially available domestically manufactured products which compete with the drug. Two kinds of products, one a derivative of Adriamycin and the other a synthesis of Adriamycin, are now being tested and may eventually compete with Adriamycin, but they are not yet being distributed on the commercial level. Consequently, the extension of the temporary duty suspension on doxorubicin hydrochloride, as proposed by this bill, would provide continued duty-free status for a critical import at a time when no like or directly competitive drug is produced in the U.S.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 6269, a bill providing duty free entry for doxorubicin hydrochloride (DHC).

The Department of State has no objection to the enactment of the proposed legislation. It would continue the temporary duty free entry for DHC provided in PL 95–159, effective November 8, 1977, for an additional period ending June 30, 1982. We understand that DHC is an antibiotic prescribed in the treatment of certain forms of cancer and that there is no United States production.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF LABOR

This is in response to your request for the views of the Department of Labor on H.R. 6269, a bill "[t]o extend the temporary suspension of duty on doxorubicin hydrochloride until the close of June 30, 1982."

The Department of Labor supports enactment of this legislation. This drug does not compete with any U.S. product and it has unique properties useful in certain treatments for cancer. Reimposing the duty could raise the price of these health care applications.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

H.R. 6278

To suspend the duty on trimethylene glycol di-p-aminobenzoate until the close of December 31, 1982.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 6278, if enacted, would amend subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (TSUS) to provide for the suspension of the column 1 rate of duty on trimethylene glycol di-p-aminobenzoate from the date of enactment until December 31, 1982. The column 2 rate would not be changed.

DESCRIPTION AND USES

Trimethylene glycol di-p-aminobenzoate is a chemical developed by the Polaroid Corp., Cambridge, Mass. Polaroid has tested this chemical and found it suitable for use as a curative agent for cast elastomers (e.g., polyurethanes).

At the present time, the most widely used curing agent in the urethane industry, 4,4'-Methylenebis(2-chloroaniline) (known as MOCA), is being investigated by the U.S. Occupational Safety and Health Administration because it is a suspected carcinogen. As a result of this situation and the likelihood that Federal and State environmental regulations will severely restrict or ban the future use of MOCA, domestic producers have shut down their production of this chemical. This, according to Polaroid, should result in a substantial demand for its new chemical alternative despite the fact that it is sold for $6 per pound compared with only $3 per pound for MOCA.

TARIFF TREATMENT

Trimethylene glycol di-p-aminobenzoate is classified under item 403.60 of the TSUS with a column 1 rate of 1.7 cents per pound plus 12.5 percent ad valorem and a column 2 rate of 7 cents per pound plus 40 percent ad valorem. As a benzenoid chemical, it is currently subject to appraisement on the basis of the American-selling-price method of customs valuation, which is based on the value of a domestically produced produce which is like or similar to the imported article.[1]

Pursuant to the Trade Agreements Act of 1979, this chemical will be classified under TSUS item 405.08 at a column 1 duty rate of 1.7 cents per pound plus 15.6 percent ad valorem beginning on the date that the Agreement on Implementation of Article VII of the GATT (the Valuation Agreement) enters into force for the United States, which is expected to be July 1, 1980.[2]

Trimethyene glycol di-p-aminobenzoate is not eligible for duty-free entry under the Generalized System of Preferences.

DOMESTIC INDUSTRY

At the present time, trimethylene glycol di-p-aminobenzoate is not produced in the United States. Polaroid has produced some small experimental quantities but does not have the capacity for largescale production. Polaroid has also stated that the only U.S. producer of p-nitrobenzoic acid (one of two chemicals needed as raw materials), Du Pont, does not have the capacity to meet the long-term volume requirements for production of the Polaroid product.

IMPORTS

There are no official import statistics available for trimethylene glycol di-p-aminobenzoate. Polaroid has stated that there have been no large quantities

[1] See headnote 4 to pt. 1A of schedule 4 of the TSUS.

[2] The American-selling-price method of appraisement will be abolished by the Valuation Agreement and replaced by a transaction-value-based system.

imported into the United States, and a search of our records supports this statement.

POTENTIAL ANNUAL LOSS OF REVENUE

Because this product has not been previously imported in any large quantity, it is impossible to accurately determine the potential loss of revenue. Polaroid's estimates indicate that imports of this product may reach 3 million to 5 million pounds in the next few years. If this volume is realized, the potential annual loss of revenue would be from $3 million to $5 million based on a price of $6 per pound. This, of course, depends on factors such as the urethane producers' acceptance of this new, higher priced product, the absence of effective lower cost alternative products, and the potential growth of higher priced cast urethane products.

TECHNICAL COMMENTS

It is suggested that the proposed legislation be amended to reflect the proper chemical name of the subject chemical; i.e., "Bis(4-aminobenzoate)-1, 3-propanediol." It is also suggested that the common name, trimethylene glycol di-p-aminobenzoate, be inserted in parentheses after the more proper chemical name to facilitate proper identification of the imported article.

The proposed item number, "405.08", is incorrect for a temporary duty modification; it is suggested that the proposed new provision be redesignated as "907.05".

Finally, as mentioned in the tariff treatment section of this report, upon the effective date of the Valuation Agreement (which is expected to be July 1, 1980), the article provided for in this legislation will be subject to classification under a new item number. Thus, the parenthetical phrase in the article description for the proposed item may need to be amended to reflect this fact.

If the Committee agrees with these suggestions, the proposed provision would read as follows: "907.05 Bis(4-aminobenzoate)-1,3-propanediol (trimethylene glycol di-p-aminobenzoate) (provided for in item 403.60, part 1B, schedule 4)."

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 6278, a bill "To suspend the duty on trimethylene glycol di-p-aminobenzoate until the close of December 31, 1982."

If enacted, H.R. 6278 would amend the Tariff Schedules of the United States to provide for a temporary suspension of the column-1, most-favored-nation, duty on trimethylene glycol di-p-aminobenzoate (TMAB) until the close of December 31, 1982. Imports of this product would currently enter the United States under TSUS item number 403.60 at a rate of 1.7 cents/lb plus 12.5 percent ad valorem, based on the American Selling Price system of valuation. The column-2, statutory, rate of duty applicable to all communist countries except Poland, Yugoslavia, Romania, Hungary and the People's Republic of China would not be affected by the bill.

The Department of Commerce does not object to enactment of H.R. 6278.

The product subject to the duty suspension legislation is a urethane curing agent. TMAB was developed as an alternative curative to 4,4'methylene bis (2 chloroaniline), (MBCA). Both products are utilized to produce cast elastomers which have various applications in many industries.

The domestic polyurethane industry uses MBCA in their production of their cast elastomer products. In 1973, MBCA was identified as a suspected carcinogen and zero exposure limits were sought by the Occupational Safety and Health Administration. Since 1973, consumption of elastomers has been declining because of uncertainties about MBCA. The last domestic production of MBCA, was shut down in the spring of 1979. Domestic producers of cast elastomers using MBCA must rely on declining inventories and imports in order to meet their needs for the curative. In addition to possible regulations forbidding use of MBCA, the industry needs cannot be totally met by foreign suppliers. Shortages of curative are expected by late 1980.

In anticipation of the closing of MBCA production facilities, TMAB was developed. While not traded in commercial quantities to date, TMAB is a substitute for MBCA. More importantly, TMAB apparently is not carcinogenic. The

new product, more expensive than MBCA, is not produced domestically. Only one of the two component materials used in MBCA production is produced domestically. The sole domestic producer of the raw material has elected not to invest in the capital equipment necessary to manufacture TMAB. To date, only one foreign producer has agreed to manufacture TMAB.

The Department believes that competitive conditions warrant the suspension of duties on TMAB. We see no adverse affects on domestic chemical producers and believe the suspension to be beneficial to domestic cast elastomer manufacturers.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 6278, a bill providing temporary duty-free entry for the organic chemical compound trimethylene glycol di-p-aminobenzoate (TMAB).

The Department of State has no objection to the enactment of the proposed legislation.

We understand that TMAB has recently been developed as a safe nontoxic replacement for the compound methylene bis-2-chloroaniline (MBC) which is used extensively by the United States plastics industry. We further understand that occupational safety and health risks are associated with the manufacture and use of MBC, and as a result, the only two firms manufacturing MBC in recent years have discontinued their production of the compound.

We also understand that TMAB is not currently manufactured in the United States but may be in the future if market development activities now under way indicate there is a sufficient domestic demand. The suspension of the duty would eliminate an unnecessary cost of an important component of certain plastics and thereby make United States producers using TMAB more competitive in the market.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

STATEMENT OF HON. JAMES M. SHANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Chairman Vanik and fellow members of the Subcommittee on Trade, I urge you to approve legislation I have introduced, H.R. 6278, a bill to suspend the duty on trimethylene glycol di-p-aminobenzoate, known as TMAB, until December 31, 1982. This chemical was developed by the Polaroid Corporation as a substitute for a curing agent—MOCA—widely-used in the cast urethane industry.

MOCA is a known carcinogen, and the Federal Government is now readying publication of standards for MOCA exposure which could effectively end its use in the United States. Neither MOCA or TMAB is manufactured in the United States. The duty suspension is being sought to ease the burden on the small processors, which comprise the bulk of MOCA users, who wish to switch to TMAB, a more expensive chemical.

All MOCA used in the United States is imported from other countries, principally Japan. TMAB is now produced by only two firms, both in Europe. The duty suspensions requested would provide a period to establish a market for TMAB, after which time it is hoped manufacturing in the United States would be economically justified. The two European firms have both indicated interest in establishing such manufacturing facilities in the United States in this case. However, the import duty of 12.5 percent ad valorem plus 1.7 cents per pound is a significant part of the cost of TMAB, and if this burden cannot be eliminated it will be difficult to successfully market the chemical in the United States.

The bill, then, would not hurt domestic employment. In fact it could eventually contribute to the creation of additional jobs. At the same time it would encourage use in the United States of a safe alternative to a known carcinogen. I defer to the testimony of Dr. Theodore F. Jula, Senior Research Group Leader and his colleague, Richard Baron, Chemical Marketing Manager, both of the Polaroid Corporation, who presented the details of the case at the March 17 Subcommittee hearing.

H.R. 6394

To improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes.

DEPARTMENT OF COMMERCE

There is currently pending before your committee H.R. 6394, the Customs Courts Act of 1980. By virtue of our responsibilities of administering the antidumping and countervailing duty laws, the Department of Commerce has great interest in this bill and, with the changes suggested below, would support its enactment.

Most important to the Department is that the bill be amended to make clear that any determination, decision, or action of the Department in the course of an antidumping or countervailing duty proceeding can be judicially reviewed only as allowed by section 516A of the Tariff Act of 1930. This section, which was enacted as part of the Trade Agreements Act of 1979, allows judicial review of certain listed preliminary determinations made in the course of an antidumping or countervailing duty proceeding. Any determinations, decisions, or actions not listed in the statute are judicially reviewable only in connection with a final determination. Section 516A allows far more extensive and expeditious review of determinations made in the course of an antidumping or countervailing duty proceeding than previously existed. The section strikes a careful balance between litigants' rights to challenge certain preliminary determinations and the Department's need to complete the investigatory or review process without excessive interference. Since this section just became effective on January 1, 1980, it is necessary to give it time to be tested by experience before judging whether changes are necessary.

Section 1581(i) in section 201(a) of H.R. 6394 could be construed as expanding opportunities to judicially challenge preliminary determinations, decisions, and actions of the Department in the course of an antidumping or countervailing duty proceeding beyond that allowed by section 516A. We doubt that this construction was intended and, in any event, it is undesirable for the reasons explained above. To clarify the language, we would suggest that the following language be added at line 6, p. 5 of H.R. 6394:

"Determinations, decisions, and actions by the administering authority or the U.S. International Trade Commission in the course of an antidumping or countervailing duty proceeding under Title VII or section 303 of the Tariff Act of 1930 shall be reviewable only pursuant to section 516A of the Tariff Act of 1930."

I should add that the language in the companion Senate bill S. 1654, at line 8, p. 7, although apparently intended to accomplish the same result as our suggested language, does not. Literally read, it merely states that the only way to judicially challenge those preliminary determinations which are listed in section 516A is according to the procedure of section 516A. Any preliminary determination, decision, or action not listed could arguably be challenged in court without waiting for the final determination.

We are additionally concerned with the injunctive relief provisions of H.R. 6394 found at line 11, p. 28. It should be made clear that no injunctive relief can be sought unless the plaintiff has exhausted his administrative remedies. Moreover, we would suggest striking the sentence beginning on line 14, p. 28, which reads:

"In ruling on such a motion, the court shall consider whether the person making the request will be irreparably harmed if such injunction is not granted, and the effect of granting such injunction on the public interest."

This sentence, which we urge be deleted, lists two of the four criteria traditionally recognized by the courts in granting injunctions. It omits the considerations that the plaintiff must show that he is likely to prevail on the merits and that the harm to him of not obtaining the injunction outweighs the harm to

the other party if the injunction is granted. The deletion we propose would allow the Court of International Trade to rely on the case law in considering whether to grant an injunction.

To conform the injunctive provisions of the Tariff Act of 1930 to this proposed change in H.R. 6394 would require repealing section 516A(c)(2) of the Tariff Act of 1930, deleting the words "under paragraph (2) of this subsection" in section 516A(c)(1), and renumbering section 516A(c)(3) to be (c)(2).

Our third proposed change is that line 17, p. 12 be amended to allow intervention in court actions under section 516A of the Tariff Act of 1930 only by interested parties as defined in section 771(9) of the Tariff Act of 1930. This change would bring H.R. 6394 closer to the provisions of existing law.

Finally, we suggest that "or the administering authority or his delegate" be added at line 20, p. 24 of H.R. 6394. This change would make clear that, in any court challenge, decisions of the administering authority, as well as the Secretary of the Treasury, are presumed to be correct.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to you from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 6394, a bill to clarify and revise certain provisions of 28 U.S.C. on judiciary and judicial review of international trade matters.

From a foreign policy perspective the Department of State has no objections to the proposed legislation.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF JUSTICE

This letter responds to several questions submitted to us as part of the hearings conducted by the Subcommittee on H.R. 6394 as well as other bills.

1. The first question addressed to us requests overviews as to the policy reasons for providing the new Court of International Trade with exclusive jurisdiction to review determinations relating to certification for adjustment assistance.

As you know, under current law, decisions of the Secretary of Labor refusing to certify a group of workers as eligible for adjustment assistance are subject to judicial review in the United States court of appeals for the circuit in which the worker or group of workers is located or in the United States Court of Appeals for the District of Columbia Circuit. 19 U.S.C. § 2322(a).

There is no similar provision relating to review of decisions of the Secretary of Commerce refusing to certify businesses or communities as eligible for adjustment assistance. Thus, one purpose of H.R. 6394 is to expand the availability of judicial review to include review of these types of decisions.

We believe that it is appropriate to grant jurisdiction over these cases to one of the international trade courts, either the Court of International Trade or its appellate tribunal, because the decisions under review require a determination as to whether the workers, communities, or businesses, in effect, have been injured by reason of imports or whether imports have contributed substantially to the injury suffered by these persons and entities. This issue is very similar to the type of issue which these courts will review under the antidumping and countervailing duty statutes.

In addition, a grant of jurisdiction to the international trade courts to review these cases would not inconvenience the plaintiffs since the international trade courts are national courts established under Article III of the Constitution. According to the Senate report on S. 1654, the comparable Senate bill, judicial review in these cases is to proceed upon the basis of the record made before the Secretary. See S. Rep. No. 96-466 (96th Cong., 1st Sess.). Thus, the parties could file the requisite papers by mail and the court could travel to the relevant locale for oral argument. See 28 U.S.C. § 256.

We originally proposed that, for these reasons, judicial review should occur in one of the specialized courts. We originally proposed and continue to believe

that review should take place at the appellate level. See S. 2857 (95th Cong., 2d Sess.). However, it is possible to contend, as H.R. 6394 provides, that review should occur at the trial level in the first instance. Pursuant to this view, by providing for review at the trial level, the losing party is assured a right of appeal. If the initial review occurs at the appelate level, as under current law or under our proposal, it is unlikely that the losing party will be able to obtain review since the Supreme Court will no doubt refuse to issue a writ of certiorari in every case involving adjustment assistance. Whatever the merits of the contention that review should occur first at the trial level, we believe that consideration by the specialized appellate court is preferable to continued review by the circuit courts of appeal.

Pursuant to H.R. 6394, a person located in a community which had applied for adjustment assistance would possess standing to challenge a negative determination if the person could establish standing under the constitutional and prudential rules established by the Supreme Court. See, e.g., *Duke Power Co.* v. *Carolina Environmental Study Group*, 438 U.S. 59 (1978).

It is true that the bill provides the Court of International Trade with exclusive jurisdiction to challenge an affirmative determination regarding eligibility for adjustment assistance. It is our understanding that this provision was placed in the bill so as to ensure comprehensive coverage. In our view, it is doubtful that a person or organization could allege sufficient injury, required by the rules regarding standing, so as to enable that person or organization to challenge an affirmative determination. However, should a person or organization make an attempt to secure judicial review of an affirmative determination, the bill makes it clear that the attempt must be made in the specialized courts, not in the district courts.

2. You have also requested our view as to whether the President's decision in an import relief case would be reviewable pursuant to proposed section 1581(i). Similarly, you have requested our view as to whether a decision to restrict oil imports for national security reasons would be reviewable in the Court of International Trade pursuant to the same provision.

To the extent these actions were taken pursuant to the authority contained in one of the trade acts (or a constitutional provision, treaty, or executive agreement which directly and substantially involves international trade) specified in proposed section 1581(i) and to the extent the hypothetical cases arose directly from an import transaction, these questions must be answered in the affirmative.

It must be emphasized that section 1581(i) does not expand the availability of judicial review. Judicial review would be available in the hypothetical cases you have specified only to the extent and in the same manner as those cases are now subject to judicial review in a district court. The only intended purpose of proposed section 1581(i) is to specify the court in which judicial review is to occur. It does not expand the availability or the scope of judicial review.

3. You request a statement of the rationale for denying jurisdiction to the Court of International Trade to entertain cases relating to the importation of immoral articles.

The question of whether certain merchandise which is proposed to be imported is obscene normally arises after seizure in a suit by the United States to enforce a forfeiture of the merchandise. Pursuant to judicial decision, the question of whether the merchandise is obscene is to be determined according to the community standards of the port of entry.

We can discern no international trade issues which would be presented in a case involving a forfeiture of allegedly obscene merchandise.

Moreover, since obscenity is determined by local standards there can be no nationwide uniformity.

In view of these factors, we see no reason for placing jurisdiction over these cases in a specialized court with national jurisdiction.

4. The fourth question requests our view as to whether the second paragraph of proposed section 1581(j) should be amended so as to delete references to actions instituted pursuant to sections 516 and 516A of the Tariff Act of 1930.

We agree that the reference to section 516A should be deleted. Section 516A is confined to decisions under the antidumping and countervailing statutes and the types of rulings specified in the second paragraph of proposed section 1581(j) will not be at issue in cases arising under section 516A.

However, the type of ruling specified in proposed section 1581(j) can be placed in issue in a case arising under section 516, the so-called "American manu-

facturer's protest". Since section 516 was intended to grant American manufacturers and others rights which parallel those of importers and since importers could challenge rulings, under specified circumstances, pursuant to proposed section 1581(j), the reference to section 516 should remain in proposed section 1581(j).

In this regard, we also believe that lines 5, 6, and 7 of page 8 of H.R. 6394 should be changed so as to read ". . . he would be irreparably harmed if forced to obtain judicial review under subsection (a) or (b) of this section". As now worded, the specified lines would not effectuate the intent of the section.

It should also be noted, as indicated in our testimony before your subcommittee, that we believe that proposed section 1581(j) is worded too broadly. We prefer the comparable provision contained in S. 1654.

5. You request our views as to the desirability of granting exclusive jurisdiction to the Court of International Trade over cases instituted pursuant to section 592 of the Tariff Act of 1930.

We agree that, at times, cases instituted pursuant to section 592 of the Tariff Act of 1930 can raise complex issues of classification or valuation which could be best understood by the Court of International Trade. However, in our view, most of these cases do not present such issues. Accordingly, we favored a provision which would have provided for the institution of these cases in the district courts with an opportunity to effect a transfer to the Court of International Trade if a complex classification or valuation issue were presented. In our view, this type of provision would not disturb the current provisions concerning these cases but would improve the situation by making use of the expertise of the Court of International Trade if, and only if, the use of that expertise was warranted. See S. 2857, supra.

The Senate bill and H.R. 6394 provide for the institution of all these cases in the Court of International Trade with the opportunity to effect a transfer to a district court if a jury trial is requested. As noted above, we prefer a provision providing for the institution of these suits in the district courts. However, we would agree that should Congress provide for institution of these suits in the Court of International Trade, the provision for a transfer if a jury trial is requested should be eliminated. There is no reason why the Court of International Trade should be prevented from conducting jury trials.

6. You request an explanation as to why the bill permits only five days for the commencement of an action to challenge a determination that an antidumping or countervailing duty case is extraordinarily complicated.

As you know, section 516A(a)(1) of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, provides that suits to challenge certain decisions, including decisions that cases are extraordinarily complicated, must be instituted within 30 days of publication of the decision in the Federal Register.

We believe that the 30 days period is too long in the situation of a decision that a case is extraordinarily complicated. The only effect of a decision that a case is extraordinarily complicated is to extend the time within which a preliminary determination is to be made either by 65 days, in the case of countervailing duties, or by 60 days, in the case of antidumping duties. Under the present statute, therefore, approximately one-half of the extended time period could expire before suit is commenced. Therefore, we believe a shorter period of five to ten days for the commencement of suit would be appropriate.

The other decisions specified in section 516A(a)(1) are more akin to final determinations than are decisions that cases are extraordinarily complicated. These other decisions have the effect of either terminating an investigation or are in some manner related to the merits of the investigation. With respect to these decisions, we believe it is appropriate to grant the potential plaintiff 30 days to evaluate the merits of its case before deciding to proceed. We also believe that it is appropriate to grant the agency involved some time to prepare the record in these decisions relating to the merits of an investigation. Thus, we believe that it is appropriate to provide a different form of treatment for determinations that a case is extraordinarily complicated than is provided for other types of decisions.

7. Your final question requests our view as to whether interest should be awarded in all money judgments issued by the Court of International Trade.

As you know, interest has never been awarded to a plaintiff who obtains a refund of customs duties through a suit in the Customs Court. In large part, this result is justified since, due to unique procedures in the Customs Court, the speed

with which a case proceeds in that court is very much within the control of the plaintiff. Accordingly, a plaintiff could obtain more interest by delaying the progress of a suit.

In addition, the Customs Service has determined that if interest had been awarded in judgments rendered by the Customs Court last year, the cost to the Government would have amounted to appproximtely $1.6 million. These calculations are only approximate and only consider the cost of awarding interest from the date a summons is filed. Conceivably, the cost could have been greater.

The bill, as it now stands, would have no budgetary impact. The bill simply provides for a transfer of functions. Accordingly, we believe that any proposal to provide for interest awards should be carefully scrutinized for the budgetary impact of such an action.

For these reasons, in our view, the bill should not be amended so as to provide for the award of interest on money judgments.

I hope that this letter satisfactorily answers your questions. We would be more than pleased to respond to any additional inquiries.

STATEMENT OF THE AMERICAN IMPORTERS ASSOCIATION, INC.

The American Importers Association is a non-profit organization formed in 1921 to represent the common interests of the United States importing community. AIA is the only association of national scope not limited to specific commodities or product lines. As such it is the recognized spokesman for American companies engaged in the import trade.

At present, AIA is composed of over 1300 American firms directly or indirectly involved with the importation and distribution of goods produced outside the United States. Its membership includes importers, exporters, import agents, brokers, retailers, domestic manufacturers, customs brokers, attorneys, banks, steamship lines, insurance companies, and others connected with foreign trade.

We welcome this opportunity to present our views on the Customs Court Act of 1980.

I. INTRODUCTION AND SUMMARY

The American Importers Association has testified in some detail concerning H.R. 6394 (S. 1654) before Judiciary Subcommittees of both Houses of Congress. From that testimony we believe that four issues should be considered by this Subcommittee.

First we believe that this bill should direct the Customs Court (to be renamed the Court of International Trade) to establish a small claims procedure for classification and valuation disputes in which the amount at issue is not large enough to warrant a full scale trial. At present, disputes of this nature are rarely taken to a customs attorney or to court even though the importer believes that the Customs liquidation is incorrect.

Second, AIA urges that the Court's jurisdiction over counterclaims asserted by the government be limited to claims arising out of the import transaction that is the subject of the case at bar. (Section 1583)

Third, the Court should not be empowered to assess additional duties against the importer in transactions before the Court. Present law allows the Court in effect to require higher duties only on subsequent importations. We believe that this amendment to present law will have a chilling effect on importers considering judicial review of Customs Service decisions.

Finally, we support the provisions which would require Customs penalty cases under section 592 of the Tariff Act of 1930 to be initiated in the Court of International Trade but allow transferral of these cases to district court at the importer's option. However, we suggest that the bill also should provide the importer the opportunity to initiate judicial review of these cases at any time after the administrative process is complete and before the collection action is commenced by the government.

The remainder of our statement expands on these points.

II. SMALL CLAIMS PROCEDURE

The fact that H.R. 6394 does not provide either Congressional authorization or endorsement for a small claims procedure in the Court of International Trade (the "Court") is of particular concern to AIA. The AIA membership has ex-

pressed regularly over the years, and particularly since the enactment of the Customs Court Act of 1970, dismay that many valid claims against the government are not litigated because the costs of pursuing a claim under the Court's procedures substantially outweigh the amounts at issue in the disputes. A small claims procedure would provide these importers their "day in court" and would be a clear affirmation of the basic American principle that the judicial process must be open to all nonfrivolous claims. Disputes over smaller dollar amounts cannot be assumed to be unimportant to the importer. By neglecting to provide for review of small claims, this bill fails to create a truly comprehensive judicial system.

The validity and fairness of small claims procedures have been recognized across the nation; increasingly courts are authorized to implement such a procedure or division. The United States Tax Court has utilized a successful small claims procedure for a number of years, and its judges have been publicly enthusiastic about its merits and its effect on the public's perception of the government's willingness to provide justice for all. (See e.g., Sterret, "Small Tax Cases" *TAXES—The Tax Magazine*, October 1972; and Dawson, "Small Tax Case Procedures in the United States Tax Court," *The Tax Advisor*, March 1972.) AIA feels that the Tax Court procedure is an appropriate model.

To this end, we have prepared an outline of principles for a small claims procedure in the Court of International Trade (Appendix). The Tax Court's procedure—upon which these principles are based—is authorized at 26 U.S.C. Sec. 7463, and is provided for in Rules 170–179 of the Tax Court.

We hope that you will find this concept as meritorious as we do. A small claims procedure will fulfill a perceived need and is consistent with the efforts of both the Department of Justice and the Congress to make justice accessible to all.

III. COUNTERCLAIMS

Section 1583 would allow the government to assert counterclaims arising out of an import transaction pending before the Court. These claims need not be related to the import transaction that is the subject of the case at bar. Under the unique features of Customs Court litigation, which result from the fact that each entry is a separate cause of action, an importer may have numerous cases pending before the Court, as many as several hundred. Many of the cases are not actively pursued but are in the Court's suspension file awaiting the decision in another case which raises the same issues. If the importer is successful in the active case, the suspended cases may be the subject of a stipulation. If the government is successful in the active case, the suspended cases will either become active, or more likely, will be abandoned. In either circumstance, the decision to activate the case remains with the importer. Section 1583 would allow the government to preempt these decisions with no attendant increase in judicial efficiency since the counterclaim is unlikely to have any relation to the case at bar.

We suggest, therefore, that section 1583 be amended to read as follows:

"The Court of International Trade shall have exclusive judisdiction to render judgment upon (1) any counterclaim asserted by the United States which arises out of *the* import transaction that is the subject matter of *the* civil action before the Court, or (2) any counterclaim of the United States to recover upon a bond or customs duties relating to such transaction."

We are also concerned that section 1583 may be read to permit the government to assert counterclaims based upon penalties assessed under section 592 of the Tariff Act of 1930 or other penalty provisions. Either the Judiciary Committee's report or the section itself should clearly state that penalties may not be enforced in any fashion under this section and must be brought as a separate action.

IV. SECTION 2643(a)—RELIEF

This proposed section read in conjunction with proposed section 1583 would appear to allow the Court to enter a judgment assessing additional duties against the importer in cases instituted under proposed section 1581. This reading is confirmed by the Senate Report (S. Rep. No. 96–466, 96th Congress, 1st Session, 20 (1979)). This represents a radical change from present law and practice and will have a profound, chilling effect on potential litigation in the Court.

While we do not object to the government being allowed to demonstrate that a claimed classification or value is incorrect by showing that another classification or value is more accurate, we do not believe that the government should be

allowed to recover additional duties. This limitation is justified by both legal and commercial equities and is consistent with our understanding of income tax litigation. At time of entry the government dictates the entered value and classification. After entry and before liquidation, the government may change the classification or value. After liquidation both the importer and the government have 90 days in which to claim alternative classifications or values—the importer through the protest procedures of section 514 of the Tariff Act of 1930, and the government under the reliquidation authority in section 501 of the Tariff Act of 1930. It would be inequitable to permit the government to recover additional duties after the importer and the government have exhausted the administrative process and after which the importer has made a decision to seek judicial review based upon the government's position stated at liquidation. The government should not be allowed to assess additional duties unless it does so within the time limits set by section 501.

Present law is designed to encourage, not to inhibit, judicial oversight of the administration of the customs laws. The government has yet to offer any justification for this radical change.

In testimony before the Senate Subcommittee on Improvements in Judicial Machinery, the Department of Justice argued for the ability to seek additional duties because review of classification and value questions would be de novo. Review of these questions has always been de novo; H.R. 6394 does not alter the standard of review.

We recommend that section 1583 be further amended by adding the following language at the end thereof:

"provided, however, that nothing contained herein shall be deemed to permit a claim barred by section 501 of the Tariff Act of 1930."

V. CUSTOMS CIVIL PENALTY CASES (SECTION 1582)

AIA supports the bill's provisions for initiating customs penalty cases in the Court of International Trade and for transferral of such cases to the district court at the importer's option. This provision permits the utilization of the more appropriate forum on a case-by-case basis. In penalty cases where an important classification issue is involved, for example, the importer may well wish to have the benefit of the Court's expertise in such matters and to have both disputes heard in a single action.

The bill also should provide the importer the opportunity to institute judicial review in the Court of International Trade of penalty cases at any time after the administration process is complete and before collection action is commenced by the government. In penalty cases the importer may be required to carry very large contingent liabilities until the government decides to institute an action for its claim—often a period of years. The importer should be allowed the opportunity to resolve the matter by initiating judicial review proceedings at an earlier date. To this end, we suggest that a new section 302 be added to H.R. 6394 as follows:

SEC. 302. Section 592 of the Tariff Act of 1930 is amended—

(1) by designating the existing language in subsection (3) as paragraph (1); by redesignating paragraphs (1) through (4) as (A) through (D) respectively; and by adding the following new paragraph (2):

"(2) A proceeding under this subsection may not be commenced until after the 90th day following the date of the issuance of a written claim under subsection (b) (2) or of a final determination in a proceeding under section 618 of this Act, whichever is the later: *Provided*, That the running of the period prescribed under section 621 of this Act for the institution of any suit or action shall be tolled during such 90-day period;"

and,

(2) by adding the following new subsection:

"(f) (1) Notwithstanding any other provision of law, within 90 days after the date of the issuance of a penalty claim under subsection (b) (2) or of a final determination in a proceeding under section 618 of this Act, whichever is the later, any person affected adversely thereby may commence a civil action against the United States to challenge such claim or determination, as the case may be, in the United States Court of International Trade.

"(2) In any civil action commenced under paragraph (1), subsection (e) shall apply, provided that, when the monetary penalty is based on negligence, the plaintiff shall have the burden of proof.

"(3) The commencement of a civil action under paragraph (1) shall bar institution of any suit or action for the collection of any monetary penalty assessed under this section and shall toll the running of the period prescribed under section 621 of this Act for the institution of any suit until such civil action is finally decided."

VI. CONCLUSION

The degree of availability and the quality of judicial review obviously have a significant impact on both the administration of the customs laws and the commercial decisions of importers. Although H.R. 6394 initially appears as a judicial reform measure, it carries potential for significantly affecting trade. Therefore we ask this Subcommittee to consider our objections to this bill.

Overall, the Customs Courts Act of 1980 will accomplish much needed reform of the powers, jurisdiction, and status of the Customs Court. It contains numerous features which will improve access to judicial review, facilitate court procedures, and expand the range of remedies available in litigation arising out of import transactions. It will largely eliminate the severe jurisdictional problems of the past decade. The import community, domestic industry, the government, and other interested parties will be well served by these proposed reforms, and AIA hopes they will be enacted.

However, the provisions discussed above represent serious shortcomings; some are likely even to discourage the use of the judicial system as a check on the administration of the customs laws. Despite our commitment to much of the substance of this bill, these objectionable provisions cause us sufficient concern that AIA must reluctantly withhold support for enactment of H.R. 6394 pending satisfactory resolution of these issues.

AIA thanks this Subcommittee for the opportunity to present its views.

APPENDIX

OUTLINE OF PRINCIPLES FOR A SMALL CLAIMS PROCEDURE IN THE COURT OF INTERNATIONAL TRADE

1. Small claims cases should be limited to questions protested under sections 514 and 515 of the Tariff Act of 1930. A "small" claim should be one in which the total amount of duty in dispute does not exceed $5000, the amount in dispute being the difference between the amount of duty claimed due by the government and the amount the importer asserts is due. We note in this regard that while the present ceiling in the Tax Court is a deficiency of less than $1500, a bill in the 95th Congress, H.R. 13082, which was passed by the House of Representatives on October 10, 1978, would have increased that amount to $5000. (Congressional Record, October 10, 1978, at H 11902.)

2. The case would be brought to the Court by a summons, but we suggest that a separate summons form be devised for these cases. (See Tax Court Form 2—Petition (Small Tax Case); the petition for regular cases is Tax Court Form 1.)

3. Discovery should be kept to an absolute minimum. At most the rules could provide that with the consent of the parties, the testimony of all witnesses, in affidavit form, be deposited with the Clerk to be released by him simultaneously to each opposite party. Each party would then have the right to serve "cross-interrogatories" on deposing witnesses which the party would satisfy with supplementary affidavits. Alternatively the Court could permit oral testimony of witnesses at trial.

4. The hearing or trial should be as informal as possible—perhaps even held in chambers. The making of a record should be optional. The importer should be allowed the option of having an attorney or broker present.

5. The decision should be final and nonappealable.

6. The decision should not be published but a summary of the bases for the decision should be given to both parties.

7. The decision must not stand as a precedent and should be binding only on the entries that were before the Court.

8. If the Court decides that the jurisdictional ceiling has been exceeded, the importer should have the option of proceeding as in a normal case. (See 26 U.S.C. § 7463(d).)

9. Corporations must be allowed to appear through an authorized agent.

10. Small claims cases should be heard throughout the country wherever a judge is present on Court business. If the Court becomes too burdened in the future, magistrates might be authorized as in the Tax Court.

11. The success of a small claims procedure depends very much on the perceived receptivity of the Court and, to a lesser extent, the Customs Service and the Department of Justice. The Court not only should be committed to making this procedure as informal, inexpensive, and unintimidating as possible, it also should include a statement of policy to that effect in the Rules. The importer should be made to feel that the Court welcomes these cases. (We made this statement not as a comment on the Court's attitude but as an indication of what the importer may need to hear.)

12. Further, explanations of the means of access to this procedure should be made widely available and written in lay language. With every eligible Notice of Deficiency the Internal Revenue Service mentions the small claims procedure of the Tax Court. Similarly the Customs Service should include a notice with eligible denied protests and let the importer know that a small claims case kit is available from the Court. The Tax Court includes in its kit the applicable forms and rules and, best of all, a pamphlet "Election of Small Tax Case Procedures & Preparation of Petitions" written for the layman.

THE ASSOCIATION OF THE CUSTOMS BAR,
New York, N.Y., March 13, 1980.

JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: The Association of the Customs Bar has noted that the Subcommittee on Trade of the Committee on Ways and Means has announced the conduct of public hearings on Monday, March 17, on various bills including H.R. 6394.

The Association's position on the proposed legislation was set forth in a comprehensive statement before the Committee on the Judiciary's Subcommittee on Monopolies and Commercial Law February 28, 1980. Ten copies of the written and oral statement as presented by Andrew P. Vance, Esq., of the Association's Practice and Procedures Committee, are enclosed in lieu of a personal appearance on March 17. We ask that they be made a part of the Committee's proceedings.

We would hope that the Committee would give particular attention to sections 201 and 301 of the Bill which would permit counterclaims, set-offs and demands relating to an import transaction and money judgments in connection therewith in Customs litigation. We are concerned that the institution of such a procedure would effectively chill the recourse to judicial review. Such inhibiting of importers' attempts to obtain relief in the courts from Customs administrative decisions would, we believe, result in a reversal of the time-honored Congressional intent that there be ready access to the Customs courts to assure the uniform and proper administration of the tariff laws. We would hope that the Committee on Ways and Means would counsel against the adoption of such counter-claim provisions.

We also call the Committee's attention to the provisions in the proposed section 602 of the Bill which we believe would limit the scope of review of the appellate court in section 337 cases. As pointed out at pages 21 through 23 of the Association's written statement, we believe that the proposal would make a change in the substantive tariff law contrary to provisions recently enacted in the Trade Act of 1974 and the Trade Agreements Act of 1979. We would hope that the Committee on Ways and Means would oppose the inclusion of that provision in H.R. 6394.

The Association is ready to render any assistance to the Committee or its members which might be desired in connection with the consideration of H.R. 6394.

Sincerely yours,

JAMES H. LUNDQUIST,
President.

STATEMENT OF ANDREW P. VANCE, ON BEHALF OF THE ASSOCIATION OF THE CUSTOMS BAR

My name is Andrew P. Vance. I am a member of the Bars of Washington, D.C and New York and a practicing attorney in the field of customs law and international trade. From 1962 to 1976, I was Chief of the Customs Section, Civil Division, United States Department of Justice, and, since June 1976, have engaged in the private practice of law. I appear this morning to present my views as an active practitioner and also to submit for the record comments on behalf of the Association of the Customs Bar.

The Association of the Customs Bar is a national organization of practicing attorneys who specialize in the field of international trade including, of course, customs law. The Association was chartered in the State of New York over 50 years ago and its representatives have in the past presented views to the Congress on legislation affecting trade. Since the Association's members practice continuously before federal administrative agencies charged with the regulation of foreign trade and import regulations, representatives of the Executive Branch, as well as before appropriate federal and state judicial bodies, we regard the Customs Courts Act of 1980 as a major step forward in conforming our traditional judicial procedures to the ever-changing and complex world of international trade.

The Association of the Customs Bar supports H.R. 6394, The Customs Courts Act of 1980.

This Bill has obviously evolved from efforts initiated in the 95th Congress by the introduction of S. 2857 to effect the laudatory purposes of the instant legislation. Extensive hearings were held on S. 2857 with the result that an improved bill was introduced, S. 1654, in the first session of this Congress and following hearings on that legislation, was passed by the Senate, in revised form, on December 18, 1979. It is obvious that this Committee and its staff have carefully reviewed the legislation enacted by the Senate and the comments made at the 1978 and 1979 hearings and has succeeded in introducing a Bill which has improved on the very fine work which the Senate had done. The efforts of the Chairman, the Committee, and the Staff are deeply appreciated by those of us who practice in this very vibrant, significant and complex field of law. We are confident that those who are affected by governmental action involving international trade will be equally grateful for the benefits and order brought to the rights of judicial review in this field.

While the Association does have suggestions which we believe will improve the Bill, and while we are particularly concerned with the counterclaim, notice of protest denial, and 337 review procedures presently included therein, this Bill is one which but with a few changes should be speedily enacted as an uncontroversial and landmark piece of legislation.

We particularly commend and endorse the following achievements of the Bill:

1. The granting of plenary powers to the Customs Courts, the necessary and ultimate completion of their transformation to Article III courts [Section 201, 28 U.S.C. 1585];

2. The elimination of the requirement of partisanship in the selection of judges of the Customs Court, or the Court of International Trade as it proposed to be called [Section 101];

3. The emphasis and clarification of the Congressional intent that the customs courts' expertise in international trade matters be utilized to resolve conflicts and disputes arising out of the tariff and trade laws [Section 201, 28 U.S.C. 1581, 1582];

4. The transfer of original jurisdiction to the Court of International Trade of civil actions to recover a civil penalty under customs laws, to recover upon a bond relating to importations, and to recover customs duties [Section 201, 28 U.S.C. 1582];

5. The enlargement of the class of persons who can litigate or intervene in actions in the customs courts to now include exporters, foreign governments, trade associations, consumer groups, unions, and those otherwise adversely affected by administrative decisions or litigation involving our international trade and tariff laws [Section 301, 28 U.S.C. 2631];

6. The availability of judicial review at an earlier stage in extraordinary circumstances [Section 201, 28 U.S.C. 1585; Section 301, 28 U.S.C. 2643 (c)(1)];

7. The clarification of the record requirements and scope of review [Section 301, 28 U.S.C. 2635 and 2640]; and

8. Removal of the anomaly of having the Government prevail even when the Court has concluded it erred by permitting the courts to take such further steps as necessary to enable it to reach "the correct decision" [Section 301. 28 U.S.C. 2643(b)].

As stated, we generally endorse the Bill and urge its speedy adoption with the changes which we recommend.

COMMENTS AND RECOMMENDATIONS

Title II—Jurisdiction of the Court of International Trade

SECTION 201, 28 U.S.C. 1581. *Comment.* We endorse the proposed 28 U.S.C. 1581 (a),(b),(c),(d),(e),(f),(g),(h), and (i). We are pleased to note the expansion of jurisdiction in subsection (a)(4) to include jurisdiction over "a demand for redelivery to Customs custody (including a notice of constructive seizure) under any provision of the customs laws, * * *". We agree with the comment in Senate Report No. 96–466 that "a demand for redelivery * * * is in reality no different than a decision to exclude merchandise from entry or delivery—a decision which the Customs Court may now review." However, we believe that it is necessary to complement this enlargement of jurisdiction by including similar language in Section 514 of the Tariff Act of 1930, as amended, since the ability to file a protest, and the filing and denial of a protest, are prerequisites to Customs Court jurisdiction which are retained in the Bill. We assume that that can easily be taken care of in Title VI of the Bill.

We are pleased with the intent to provide in subsection (j) for review of administrative rulings which are really final in nature and effectively foreclose importation and thus the opportunity to test the validity of the ruling. However, as drafted, the last clause beginning with "except that this exclusion shall not apply" appears to effect the opposite result in that to avail himself of the exception a person would have to show he would be irreparably harmed if he didn't have the opportunity to obtain judicial review under the very subsections which require exhaustion of administrative remedies available only after there has been an importation. Perhaps the insertion of the word "except" between "judicial review" and "under subsection (a) * * * " would make clear the apparent intent of the drafters.

(j). We assume that in excluding the Court of International Trade from jurisdiction over civil actions arising under 19 U.S.C. 1305, the Committee had in mind the provision therein for jury trial. This would be consistent with the Committee's provision in 28 U.S.C. 1582(b) for transfer of cases arising under 19 U.S.C. 592, 704(i)(2), or 734(i)(2) if the Court determines that the party seeking a jury trial is entitled to one. However, as we note in commenting on the 1582(b) provisions, we see no reason why the Court should be ousted or jurisdiction just because a jury trial is sought. In view of the logical purpose of this legislation to vest in these specialized courts all questions having to do with import transactions, we believe that litigation involving the articles prohibited from importation under 19 U.S.C. 1305 should also be conducted in the specialized customs courts. We would therefore propose that subsection (j)(1) be stricken and there be a new subsection in 1582 giving the Court of International Trade exclusive jurisdiction over any civil actions arising under section 305 of the Tariff Act of 1930.

Recommendation.—Strike the proposed subsection (j)(1).

Redesignate the proposed subsection (j)(2) as (j) and have it read as follows, including the revision in the last four lines discussed above:

"(j) The Court of International Trade shall not have jurisdiction to review any ruling or refusal to issue or change a ruling relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, and similar matters issued by the Secretary of the Treasury other than in connection with a civil action commenced under subsection (a), (b), or (c) of this section, except that this exclusion shall not apply if a person demonstrates that he would be irreparably harmed without an opportunity to obtain judicial review except under subsection (a), (b), or (c) of this section."

SECTION 201, 28 U.S.C. 1582. *Comment.* We heartily endorse the proposed changes in 28 U.S.C. 1582 which will vest jurisdiction in the Court of International Trade of civil penalty, customs bond, and recovery of customs duties cases.

We believe that such litigation logically belongs in the Court of International Trade. We see no need to transfer such litigation to the district courts because one of the parties may desire that the action be tried before a jury. We see no reason why the judges of the Court of International Trade should not conduct jury trials as well as non-jury trials. Presumably, since they are able to be assigned to a District Court pursuant to 28 U.S.C. 293(b), where they can conduct jury trials, such trials could also be conducted by them in the Customs Court. We would propose that if it is deemed that the right to a jury trial should be preserved in these cases, provision be made in the statute for the Customs Court to afford such a trial and that, in those circumstances, they avail themselves of the jury list compiled by the Clerk of the nearest District Court to where the Court of International Trade is sitting.

We have already expressed the opinion in our comments on the Section 1581 provisions that litigation under 19 U.S.C. 1305 should be commenced in the Court of International Trade and are therefore recommending a new paragraph (4) to subsection 1582(a).

Recommendation.—(a) Strike "or" at the end of paragraph (2); add the "or" to the end of paragraph (3); and add the following as a new paragraph (4):

"(4) To forfeit, to confiscate, or to destroy the book or the matter seized pursuant to section 305 of the Tariff Act of 1930.

Strike the proposed 19 U.S.C. 1582 (b) and (c) and substitute in their place:

"(b) Where a trial by jury is requested in accordance with the rules of the Court of International Trade, the Court shall call upon the Clerk of the District Court in the district in which it is sitting for assistance in empaneling a jury from the jury list maintained in that district. For trials at its headquarters in New York City, the Court of International Trade may avail itself of the assistance of the clerks of either the Southern or Eastern Districts of New York, or may maintain its own jury list."

SECTION 201, 28 U.S.C. 1583. *Comment.* We strenuously oppose the proposed provision providing for judgment upon counterclaims asserted by the United States in litigation commenced in the Court of International Trade seeking to rectify alleged errors of Government officials in the administration of customs laws. A provision for counterclaim permitting a money judgment for the United States can only have a chilling effect on the commencement of litigation in the Court of International Trade and fails to recognize the unique nature of that litigation.

Basically, litigation in the Court of International Trade is of an in rem nature with class action overtones. Under constitutional precepts, the Court's decision on classification questions or in cases involving principles generally applicable to imports will affect not only the particular importation(s) or merchandise before the Court, but all such or similar importations or merchandise. The Congressional policy heretofore has sought to facilitate resort to this specialized judicial forum when importers, small or big, feel that their importations are not receiving the administrative treatment contemplated by the Congress and by the Constitution. It should be noted that absent the initiation of an action by an importer, the Government's administrative decision on the importation in question would be final unless reliquidation occurs within 90 days, in accordance with statutory prerequisites.

Merchandise and its uniform treatment for customs purposes is at the heart of litigation in the Court of International Trade, not the individual importer or plaintiff. The Constitution requires uniform treatment of merchandise at any port in the United States. Importer A should not receive more favorable treatment than Importer B, and one should not be able to seek out a port in State A over a port in State B because the customs treatment in State A will be different than the customs treatment in State B.

The appeal and protest provisions in the Tariff Acts and the resultant reviews, first exercised by the Board of General Appraisers under the 1890 Tariff Act, and since 1926 by the Customs Court, have signified not only the importance which the United States gives to judicial review but the recognition by Congress of the need to satisfy the constitutional command that there be uniform treatment. Customs litigation is looked upon as a means of assuring uniform administrative interpretations of legislative initiatives and commands. Historically, the intent has been to encourage and facilitate review of Customs administrative decisions.

Until the Customs Courts Act of 1970, judicial review was automatic after the administrative filing of an appeal for reappraisement or of a protest against

classification. With the tremendous increase in the volume of trade and importations, the number of cases automatically referred to the Customs Court was deemed to be drowing the judicial process, so changes were made which equated the initiation of actions in the Customs Court with initiations of actions in other courts. But at no time was it intended to inhibit the importer from seeking judicial review: the effort was merely to assure that judicial review was desired when administrative review was completed. In fact, emphasizing the desire that access to the Court be facile, the filing fee in the Customs Court was kept considerably lower than that in other federal courts and the initial filing paper a summons, as contrasted with a complaint, was decided upon as not only underscoring the greater ease of obtaining judicial review but as recognition of the fact that many actions are filed in the Customs Court which are dependent upon the result in so-called test cases. This is so because importations of merchandise are the core of a civil action in the Customs Court. Therefore, before an issue or question of law is resolved with regard to particular merchandise, there may be many importations of such or similar merchandise by a number of importers.

To the present day, the recognition that normally the essence of, or concern in, customs litigation is the correct (uniform) tariff treatment of merchandise rather than the individual importer is underscored by the fact that no interest is paid to an importer upon his establishing that more than the duty legally due the Government was exacted from him, and that no impediment has been placed to his initiating or taking the risk and the financial cost of litigation by threatening him with a higher duty should he challenge the duty originally assessed. The Government's overriding interest is the correct tariff treatment of merchandise and the importer's unfettered recourse to the Court of International Trade is a means of assuring the realization of that goal. The proposed language would drastically alter this whole concept and chill the initiation of litigation. In effect, it says to an importer that if you are so brash as to challenge the Government you will run the risk of a judgment that can be higher than what we have assessed, and it is likely that counterclaims for higher assessments of duty will be asserted often as a defensive tactic. Defense against such kinds of claims would appreciably increase the cost of litigation, and on this basis alone will deter recourse to the judicial forum. Further, as drafted, the statute contemplates that a counterclaim can be asserted which arises out of "an" rather than "the" import transaction before the Court, and therefore the trial and resolution of individual cases may be made more complicated by the addition of counterclaims based on other importations of the same importer of different merchandise involving different facts and issues of law.

It is important to note that the Government is able to assert a counterclaim at present as a defense to plaintiff's claim and, if the Customs Court agrees with it, to be able to use the Court's declaration to that effect as a basis for Customs treatment of unliquidated entries. This is a benefit which the Government derives from the initiation of litigation by an importer—it may never attain that correct treatment at a higher duty if its erroneous decisions are not challenged because of unreasonable risks—all undertaken by the importer. The proposed provision is further contrary to recent legislation which has recognized the desirability of settling an imopter's liability to the Government at the earliest practical date. The law now sets a limit on the liquidation of entries. Customs Procedural Reform and Simplification Act of 1978. This was enacted by Congress in response to the reasonable business request that an importer know at some reasonably fixed date the outside limit of his obligation to the Government. In the past, the liquidation of an entry had no set outside limit. The proposed provision for counterclaim in 28 U.S.C. 1583 coupled with the right given to the Court in 28 U.S.C. 2643 to enter a money judgment for the United States would remove that finality from any liquidations challenged by the importer in the Court of International Trade. We urge that the Congress not overturn the present law in this regard in the absence of compelling arguments otherwise, of which we have heard none.

As far as the recovery of customs duties or recovery on a bond, we would frankly not have as much problem with a provision for a setoff or a demand limited to the same import transaction pending before the Court in a particular action. We should note, however, that an importer could not be before the Court in a challenge of an administrative decision subject to the protest procedure without having paid the contested duties. Further, it seems pertinent to point out that no provision is made with regard to matters commenced by the United

States pursuant to 28 U.S.C. 1582 for the defendant to be able to plead as a defense any counterclaim which it may have against the Government relating to customs duties. It would seem that equity would require that the defendant have the right to counterclaim, setoff or demand in litigation commenced by the Government pursuant to 28 U.S.C. 1582, if the Government is to be given that right with regard to actions commenced under 28 U.S.C. 1581.

In conclusion, it seems to us that the principle of facilitating recourse to judicial review of the usual customs administrative decisions outweighs any imagined need for money judgments for setoffs, demands, or counterclaims which have not hitherto been available in the usual customs litigation and which can only be viewed as an attempt to deter or chill recourse to judicial review. We are not aware of any demonstrated need by the Government for these provisions. Absent an overwhelming public policy need to overcome the historic nature of customs litigation, we believe that this proposed provision should be stricken in its entirety.

Recommendation.—Strike 28 U.S.C. 1583 as proposed, deleting the proposed section heading under Chapter 95 and renumbering 28 U.S.C. 1584 as 1583, and 28 U.S.C. 1585 as 1584, correcting the chapter headings as appropriate.

Title III—Court of International Trade Procedure

SECTION 301, 28 U.S.C. 2631. *Comment.* Section 2631(a) in S. 1654 as enacted, permitted the commencement of civil actions by the estate, heirs, or successors of a person who had filed a protest, or by a surety of the protestant in the transaction the subject of the protest. We understand that the omission of the surety's right to bring an action was an inadvertence. We would suggest that provision also be made for estate, heirs or successors so as to remove any doubt as to their right to commence an action, as this has not been certain in Customs Court proceedings.

We have no objections to the proposed provisions of 28 U.S.C. 2631 (b) and (c), although we note again the omission of the phrase "or his estate, heirs, or successors" included in the Senate version. We believe the additional phrase would be helpful. At any rate, there should be a consistency. If the Committee feels that the phrase is not necessary in view of the state of the law as they understand it, then the legislative history should show that and the phrase should not be included in any of the paragraphs so that no inference could be drawn from its inclusion in one paragraph and not in another.

We have no objection to the proposed provisions of 28 U.S.C. 2631 (d), (e), and (f).

Civil actions described in Section 1581(a) or 1581(b) have been excepted from the provisions of 28 U.S.C. 2631(g). We believe the same exception should apply to the civil actions described in Section 1581(c) as those cases include the classical types of litigation, or extensions thereof, described in Sections 1581 (a) and (b).

We support and endorse the provisions of 28 U.S.C. 2631 (h) and (i).

Recommendations.—(a) Add the phrase "or by his estate, heirs, or successors, or by a surety of such person in a transaction which is the sub ect of the protest" after the words "such Act" at the end of the present proposed subsection (a).

(b) and (c). Add the phrase "or his estate, heirs, or successors" to the end of each of these subsections.

(g) Substitute the phrase "Section 1581(a), 1581(b), or 1581(c)" for the phrase "Section 1581(a) or 1581(b)."

SECTION 301, 28 U.S.C. 2632. *Comment.* We have no difficulty with the proposed provisions of 28 U.S.C. 2632 (a), (b), and (d).

Section 516A of the Tariff Act of 1930 permits the commencement of actions in the Customs Court by the filing of a summons and a complaint, or by the filing of a summons followed thirty days thereafter by a complaint. As drafted, we believe that proposed 28 U.S.C. 2632(c) is subject to a construction that that provision has been altered. Since we understand that that is not the intention of the Committee, we recommend that the words "or a summons" be inserted after the word "summons" in the third line of that subsection.

Recommendation.—(c) Add the phrase "or a summons" following the word "summons" at the end of the third line of subparagraph (c) so that the third and fourth lines will read as follows:

"Commence by filing with the Clerk of the Court a summons or a summons and a complaint, as prescribed in such section with the"

SECTION 301, 28 U.S.C. 2635. *Comment.* We support and endorse the proposed provisions of 28 U.S.C. 2635 (a) and (b). We believe that the confidential information provided for transmittal in 28 U.S.C. 2635(c) should be accompanied by a non-confidential description of the nature of the information being transmitted as provided for in 28 U.S.C. 2635 (b)(2) and (d)(2). We endorse and support the provisions in 28 U.S.C. 2635(d).

Recommendation.—(c) We recommend that the following sentence be added to 28 U.S.C. 2635(c):

"Any such information shall be accompanied by a non-confidential description of the nature of such confidential information."

SECTION 301, 28 U.S.C. 2636. *Comment.* We strenuously oppose the change in current law wrought by the proposed 28 U.S.C. 2636(a)(2). Section 515(a) of the Tariff Act of 1930, 19 U.S.C. 1515(a), requires that notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary. The denial of the protest is the action which triggers the right of a protestant to commence litigation in the Customs Court. The provision for mailing of notice is one that was sought and fought for by importers, and the legislative history of the Customs Court Act of 1970 makes it clear that the Customs Service is required to give the importer notice of the action it has taken on a protest; it is also clear that an importer is entitled to this notice and that he can await its receipt before counting the start of the running of the statute of limitations for the commencement of an action in the Customs Court. It is also clear from the legislative history that this provision is for the protection of the importer and that any action taken by Customs after two years is of a ministerial nature. Therefore, it had been the position of the Department of Justice in the past that after the two year period had expired there is nothing in the statute to prevent an importer from initiating an action in the Customs Court without waiting for the notice of denial, should he so desire, since the notice would be merely formal advice of denial, issued for his protection, and that could be waived by the importer. The Senate analysis to the contrary is apparently based on the misreading of *Knickerbocker Liquors* v. *United States*, 78 Cust. Ct. 192, C.R.D. 77-5 (1977), which did not involve a situation where the protestant commenced an action in a situation where he had not received a notice of denial. At any rate, we are proposing a new 2636 (a)(2) which we think will assure the importer's right to proceed in the Court of International Trade after two years, or to await the notice of denial, which we believe was the intent of Congress in 1970 and which we hope continues to this day.

Further, we are concerned that the Committee's proposed provision herein would invite the Customs Service, as a management decision, not to mail notices of denial, in the view that pursuant to the proposed Section 2636(a) (a), the mailing of notices is an unnecessary management burden since the two year period starts to run without such mailing. In fact, any incentive to act on protests would be removed from a managerial view, and the protest be turned into a meaningless dilatory piece of paper. This is exactly what the importers did not want to occur and why they fought so hard to obtain the requirement of a notice of denial in the 1970 Act. Under the 1970 Act, it is clear that Customs must act on a protest by at least giving a notice of denial after the two years have expired and that an importer has a right to rely on that notice before having the statute run on him. The Commitee's proposed language would effectively relieve the Government of any obligation to respond to an importer's protest. Under all the circumstances, if the change that we propose is not acceptable, it would be preferable from our point of view to strike the second subparagraph of 2636(a), leaving the present state of the law extent, as set forth in the two subparagraphs remaining.

With regard to 28 U.S.C. 2636(d), we note that the Committee has lessened the time for the filing of an action in the Court of International Trade from the 10 days provided in the Senate Bill to five days after the date of publication of the determination that the case is extraordinarily complicated. We believe that five days is unreasonably short considering delays in receipt of the Federal Register, etc., and recommend that the ten day period should be restored.

Recommendation.—(a) Substitute the following as Section 2636(a)(2):

"(2) If no notice is mailed within the two-year period specified in section 515(a) of the Tariff Act of 1930, as amended, at any time after the date of the expiration of the two-year period specified in said section 515(a) prior to the mailing of a notice of denial or"

(d) Substitute the word "ten" for the word "five" in the proposed 28 U.S.C. 2636(d).

SECTION 301, 28, U.S.C. 2643. *Comment.* In view of our position on counterclaim asserted earlier in our comments on 28 U.S.C. 1583, we oppose the words "or in any counterclaim asserted under Section 1583 of this Title,".

We particularly commend the Committee in making possible through the proposed provisions of 28 U.S.C. 2643(b) for the Court of International Trade to reach the correct decision in those instances where the Government's decision has been proven erroneous but there has been a failure or difficulty of proof of what the correct decision should be.

We endorse the proposed language in 28 U.S.C. 2643(c).

Recommendation.—(a) Strike the words "or in any counterclaim asserted under section 1583 of this Title," so that the section will read as follows:

"(a) In any civil action commenced under section 1581 or 1582 of this title, the Court of International Trade may enter a money judgment for or against the United States."

Title VI—Technical and Conforming Amendments to Other Acts

SECTION 601(a), 19 U.S.C. 1305. *Comment.* We recommend a new section in Title VI, which for the sake of convenience we are designating 601(a) for this presentation although its adoption in final form would call for the subsequent renumbering of this and succeeding sections. At any rate, consonant with our recommendations on the sections 1581 and 1582 provisions for the vesting of exclusive jurisdiction in the Court of International Trade over 19 U.S.C. 1305 actions, we propose the following conforming and technical amendments to the said section.

Recommendation.—Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305) is amended

(1) by striking the phrase "and no protest shall be taken to the United States Customs Court from the decision of such customs officer;"

(2) by striking out "district court" and inserting "Court of International Trade" in lieu thereof;

(3) by striking out "district attorney (U.S. Attorney)" and inserting "Attorney General" in lieu thereof; and

(4) by striking the phrase "of the district in which is situated the office at which such seizure has taken place,"

SECTION 602, 19 U.S.C. 1337(c). *Comment.* We oppose this provision and frankly continue to be surprised to find it in the technical and conforming amendments title of this Bill. There not only is no basis for this provision in the other titles of this Bill, as the Senate Report concedes, but we deem it to be an attempt to make a change in the substantive law contrary to provisions recently enacted in the Trade Act of 1974 and the Trade Agreements Act of 1979.

19 U.S.C. 337(c) currently provides that:

"(c) The Commission shall determine, with respect to each investigation conducted by them under this section whether or not there is a violation of this section. Each determination under subsection (d) or (e) of this section shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter V of Title V. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) of this section may appeal such determination to the United States Court of Customs and Patent Appeals. Such court shall have jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court."

This provision was enacted in the Trade Act of 1974, and amended (by the inclusion of the reference to subsection (f)) in the Trade Agreements Act of 1979. It is obvious that the Congress in 1974 intended to enlarge the scope of review of the Court of Customs and Patent Appeals over determinations of the International Trade Commission under Section 337. Hitherto, the Court's scope of review had been limited to questions of law only (28 U.S.C. 1543). However, the President's role was diminished under the Trade Act of 1974 amendments and the Commission was required to make its decisions with regard to "the effect of such exclusion upon the health and welfare, competitive conditions of the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers," in 19 U.S.C. 337(e) upon the record and after notice of an opportunity for a hearing (19 U.S.C. 337(c)).

While we question whether this substantive change in the tariff law is within the jurisdiction of the Judiciary Committee rather than the Committee on Ways and Means, we do not understand the basis for its inclusion in the statute. The aggrieved parties from an ITC decision have been given the right of an appeal to the Court of Customs and Patent Appeals as if they were going there from a trial court. In many respects, the Commission's proceedings do parallel those of a trial situation. Since the judgment of a trial court is a nexus of an appeal, and the appellate court considers all aspects of the trial court's consideration going into that judgment, including the appropriateness of the judgment, we submit that the appellate court should be able to treat the final determinations in the 337 proceeding in a similar vein.

We understand that this provision was sought by the International Trade Commission, and the Senate Report seems to base support for this position on Congress' failure to amend 28 U.S.C. 1543 when it amended section 337 in the Trade Act of 1974. We think too much is made of an obvious technical oversight. The Congressional intent on the substantive aspect was clearly voiced in the 1974 legislation and reinforced in the Trade Agreements Act of 1979 amendment. This was apparently what influenced the Court of Customs and Patent Appeals in its 1978 decision *Solder Removal Company* v. *U.S. International Trade Commission*, 582 F. 2d 628, referred to in Senate Report 96-466.

There has been no showing of which we are aware that the appellate court has sought to overstep the usual appellate considerations and forebearance exercised in review of administrative proceedings such as those under 19 U.S.C. 337. We would hope that under the circumstances there would be no diminution in the scope of review available to an aggrieved party in 337 cases. As to the claimed distinction between adjudicative and non-adjudicative determinations between decisions made under subsections (d) and (e) and (f), we question whether orders issued pursuant to subsection (f) are not to be based on record considerations since among the factors to be considered are those enumerated in subsection (e) and the decision based on an adjudicative proceeding.

Recommendation.—Section 602 of Title VI should be amended by striking paragraph (2); and thereafter by striking the number (1), the semicolon after "thereof" and the word "and" appearing thereafter, and inserting a period after "thereof."

SECTION 603. *Comment.* In order to carry out the expansion of jurisdiction to embrace a demand for redelivery to Customs custody as contemplated by the provision in section 201 of the Bill regarding 28 U.S.C. 1581(a)(4), it is necessary to create a right to protest such demand by including it among the administrative decisions which may be protested in 19 U.S.C. 1514.

Recommendation.—Renumber section 603(2) as section 603(3) and insert the following as a new section 603(2):

"(2) By amending (4) to read: '(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody (including a notice of constructive seizure) under any provision of the customs laws except a determination appealable under section 337 of the Tariff Act of 1930;' "

SECTION 605. *Comment.* The reference to Section 2643(d) in Section 605(b)(3) in amendments to Section 516A(c) of the Tariff Act should be to 2643(c)(1).

Recommendation.—Substitute the phrase "section 2643(c)(1)" for "section 2643(d)" in Section 605(b)(3).

SECTION 606. *Comment.* In the event that the Committee agrees with our proposal that actions commenced in the Court of International Trade under 28 U.S.C. 1582 should be tried in that Court, whether jury or non-jury, then the phrase "or transferred from the Court of International Trade to a district court under section 1582 of title 28, United States Code * * *" in the amendment to 19 U.S.C. 1592(e) should be deleted.

Recommendation.—Delete the phrase "or transferred from the Court of International Trade to a district court under section 1582 of title 28, United States Code * * *" from the proposed amendment to 19 U.S.C. 1592(e) of Section 606 of the Bill.

SECTION 609. *Comment.* While we have no objection to the proposed amendment to Section 3 of the Act of July 5, 1884, we question the propriety of its being included in Title VI of the Bill. It would appear to be better suited to inclusion in Title II of the Bill having to do with the jurisdiction of the Court of International Trade either as a subpart of Section 1581(i) or as a new subsection between the present subsections (h) and (i) of Section 1581.

Recommendation.—Shift the amendment of 23 Stat. 119 effected by the present Section 609 of the Bill to Section 201 of the Bill.

Title VII—Effective dates and miscellaneous provisions

SECTION 701. *Comment.* (a) We don't believe it appropriate to have as an effective date for legislation as broad and encompassing as this Bill a date that is in the past. In fact, it seems to us to create problems. An example would be if the Bill were to retain the proposed provision of Section 2636(2). We feel that certain rights would be extinguished ex post facto. There are also places in the legislation that make references to the rules of the Court of International Trade. Obviously, many of the procedures in the Court of International Trade, and in the Court of Appeals for International Trade, Patents, and Trademark legislated under this Bill will require the Rules of these courts to be amended. Neither the requisite amendments nor the promulgation thereof could have occurred prior to January 1, 1980, when Title VI of the Tariff Act of 1930, as added by Title I of the Trade Agreements Act of 1979, took effect. Further, we do not think that the Committee means to approve retroactively of any powers which the courts may have invoked which they were not empowered to do prior to the passage and approval of this Act. Finally, as some of the provisions for scope of review could be deemed a change in the rights of parties and the procedures of the courts, such an effective date provision could raise questions with regard to the propriety and finality of judgments rendered after January 1 and before the enactment and approval of the Act.

Under all the circumstances, and to avoid unintentioned mischief, we would suggest that the Act should be effective on the date of approval as to the powers conferred upon the courts and no sooner than 45 days thereafter with regard to the remainder, giving the courts the necessary minimum time to make any procedural and other changes which the Bill will require the courts to plan for and to announce.

(b) We assume that there is some technical reason in the budgetary provisions of the Government that requires the effective date for Section 405 of the Act to be October 1, 1980, and of course we have no objection to that.

(c) The proposed language in subsection (c) does not appear applicable to actions brought under subsections (c), (d), (e), and (f) of 28 U.S.C. 2631 since entries do not seem to be the crux of the matters to be litigated in those actions.

(d) We oppose the proposed provision in subsection (d)(2) as it operates retroactively and is basically in conflict with the provision in (d)(1) assuring the litigants that determinations made prior to January 1, 1980, on which changes were effected in the applicable countervailing duty and anti-dumping laws by the Trade Agreements Act of 1979, would be reviewed judicially on the basis of the law as it existed on the date of such determinations. The scope of review and procedures thereof available prior to January 1, 1980 determinations are presently being actively litigated in the Customs courts. We suggest that those are legal decisions best left to the courts as to rights legislated in prior statutes. If those rights are broader than those legislated in 1979 prospectively for post-January 1, 1980 determinations, we don't believe it appropriate to extinguish or diminish them by legislative fiat after the fact. We hope that the Committee will delete subsection (d)(2) from the Bill.

Recommendation.—(a) Strike everything that follows "effective" in the proposed section 701(a) and substitute in lieu thereof the following: "45 days after approval of this Act."

(c) Strike the entire proposed section 701(c) and insert in lieu thereof the following:

"(c) The amendments made to 28 U.S.C. 1585 by section 201 of this Act; to section 2644 by section 301 of this Act; by section 402 of this Act; by Title V of this Act; and by sections 702, 703, and 704 shall be effective on the date of the approval of this Act."

(d) Strike the proposed subsection (d)(2) and the "(1)" after "(d)."

STATEMENT OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION, DONALD W. PALEY, CHAIRMAN, COMMITTEE ON CUSTOMS LAW

Statement by Donald W. Paley, Esq., Chairman, Committee on Customs Law, New York County Lawyers' Association, on H.R. 6394, 96 Cong. 2nd Sess., introduced by Representative Rodino ("Customs Courts Act of 1980") to improve the Federal judicial machinery by clarifying and revising certain provisions on

Title 28, United States Code, relating to the judiciary and judicial review of international trade matters.[1]

Recommendation.—It is recommended that the bill be approved, but with provisions deleted pertaining to counterclaim by the United States, for the reasons set forth below.

STATEMENT

The New York County Lawyers Association is composed of over 10,000 attorneys practicing in and near the borough of Manhattan. The Committee on Customs Law is composed of private practitioners, government attorneys in the Customs field, and staff attorneys with the United States Customs Court. The Committee participated in the drafting process of a companion bill, S. 1654, and filed a report on that bill as originally introduced, with the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary on September 10, 1979.

We endorse the general principles and most of the provisions of H.R. 6394, with the exception of the counterclaim provisions contained in proposed new Section 1583 of Title 28 (pg. 9, line 11). Together with the Association of the Customs Bar, we strenuously opposed before the Senate the novel, dangerous, and inapposite transplantation into Customs jurisprudence of the Government counterclaim concept. There has been no provision for a counterclaim by the Government in actions brought by importers since the present system of Customs litigation was established by the creation of the Board of General Appraisers (now the Customs Court) in 1890. In such litigation the importer bears the burden of proving not only that the Government's classification or appraisement is erroneous but that its claim is correct. Injecting the concept of defending counterclaims (which may be extraneous to the original claim) would place an additional and unwarranted burden on the importer and effectively reduce—or even eliminate—the availability of judicial review.

To those with a working knowledge of Customs litigation procedures, it is apparent that the proposed provisions granting the United States the right to counterclaim (and to receive an affirmative money judgment in the amount of its counterclaim, as covered in proposed new Section 2643 of Title 28 at pg. 27, line 17 of the bill) would have a tremendously chilling effect on the initiation of Customs litigation by importers.

Proposed new Section 1583 would allow the United States to assert and receive a judgment upon "any counterclaim asserted by the United States which arises out of an import transaction that is the subject matter of a civil action pending before the Court", and in addition, allows the United States to counterclaim "to recover upon a bond or Customs duties relating to such transaction."

As the Subcommittee is undoubtedly aware, Customs litigation is normally conducted upon the basis of multiple entries (in the hundreds or thousands) pending before the Court on various summonses filed by the importers against denied protests. Each summons, upon its filing before the Customs Court, becomes "a civil action pending the Court" and each entry covered by such summons also becomes "an import transaction that is the subject of a civil action pending before the Court."

The normal conduct of litigation wherein multiple summonses and multiple entries (covered by such summonses) are involved contemplates the selection of a test case (usually covering one or several entries) by the filing of a complaint and an answer pertaining to that merchandise only. Therefore, action on all other cases covering identical or similar merchandise, subject to the same legal and factual disputes as the test-case merchandise, is usually "suspended" by order of the Court, pending the outcome of the test case.

Consider this situation: An importer has filed 100 separate civil actions before the Court (by summons) covering 500 entries in total. The importer files his complaint in Civil Action No. 1, covering one summons embracing five entries. The importer, let us say, is claiming the merchandise to be properly dutiable at a rate of 5 percent rather than 10 percent as assessed. Under the proposed bill, the Government, in its answer, could assert a counterclaim that the proper rate of duty should be 20 percent, AND ALSO that the appraised value of $1 per unit is too low and the merchandise should be valued at $2 per unit. *Such counterclaim*

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[1] This statement is issued by the Committee pursuant to the by-laws of the Association which permits such dissemination. It has not been submitted to the Board of Directors for approval and therefore does not necessarily represent the views of the Board.

need not be limited to the five entries covered by the test case complaint, but under proposed Section 1583 could include the other 495 entries covered by the other 99 summonses in the files of the Court. At this stage the Government would have thus created *a massive contingent* duty liability for the test-case importer/plaintiff.

The counterclaim weapon is unnecessary because the present system adequately protects the revenue. Under the present system, in addition to defending the classification (or value), the Government is entitled to claim alternatively that the merchandise before the Court should be assessed at a higher rate (or value). A decision by the Customs Court that a high rate of duty or valuation properly applies (other than that determined upon liquidation by Customs) becomes, in effect, a declaratory judgment under which the Government is authorized to apply the higher rate of duty or increased value to unliquidated entries pending before the Customs Service, or to future entries of such merchandise. Normally this is done by the publication of a notice in the Federal Register or Customs Bulletin, in the interest of fairness and of adequate notification to the importing community of a change in administrative practice flowing from the Court decision. However, Section 1583 appears to go even much further than the situation discussed above in that it would allow the Government to introduce completely different issues relating to the classification or value of entirely different merchandise by way of counterclaim, thereby unnecessarily complicating the record and obscuring the issue which the importer set out to litigate. For example, even though the importer's action may have been brought to determine whether Customs was erroneously over-assessing his importations of electrical equipment, the Government would be able to counterclaim that wearing apparel imported by the same plaintiff on a different importation, the subject matter of a completely different civil action, should have been assessed at a higher rate than it was assessed (e.g.: because it was ornamented), or should have been appraised at a value higher than that at which it was appraised (e.g.: because a commission paid by the importer is dutiable). This would serve only to encumber and complicate the record and substantially delay the determination of the issue for which the importer instituted his action.

In short, we are concerned that proposed Section 1583 would, in effect, mandate an aggressive stance by Government attorneys by granting a potent and unnecessary weapon, the use of which would coerce many importers into forced abandonment of otherwise meritorious cases, and discourage other importers from pressing otherwise valid claims before the Customs Court. The mischief which could be wrought by the too-broad counterclaim provisions of proposed Section 1583 far outweighs any potential benefits to be gained from this section.

Furthermore, we are familiar with the views of the Association of the Customs Bar in opposing the counterclaim provision expressed in its presentation to the Subcommittee on February 28, 1980 and are fully supportive of those views.

ALTERNATIVELY, THE PROVISIONS ALLOWING THE GOVERNMENT TO COUNTERCLAIM SHOULD BE LIMITED TO THOSE ENTRIES ON WHICH A COMPLAINT HAS BEEN FILED

We are unalterably opposed to the counterclaim provision in its entirety. If the Subcommittee is persuaded that the counterclaim provisions should be retained, we urge that the language of Section 1583 be limited to permit the Government to counterclaim only on those entries under active litigation by the importer, i.e., those entries covered by the importers's complaint.

The Senate's intention to limit the scope of the new counterclaim procedures is quite evident in its discussion of proposed Section 1583 of the Senate bill. (See Senate Report No. 96-466, 96 Cong., 1st Sess. on S. 1654, p. 13). Normally, a counterclaim is asserted in the answer (see Rule 13 of the Federal Rules of Civil Procedure) which follows the complaint. We therefore urge that if the counterclaim provisions are to be retained at all, proposed Section 1583 be redrafted to read as follows (new language italic):

"The Court of International Trade shall have exclusive jurisdiction to render judgment upon (1) any counterclaim asserted by the United States which arises out of an import transaction that is the subject matter of a civil action pending before the Court *in which a complaint has been filed*, or (2) any counterclaim of the United States to recover upon a bond or customs duties relating to such transaction."

Under the provision as so amended, importers would at least have some measure of assurance that in initiating litigation in the Customs Court, they are not exposing themselves to huge "back-door" duty liabilities on every entry previously made or to be made, which may ultimately be pending before the Customs Court for disposition.

DISSENTING VIEW

A member of the Committee who is on the staff of the Department of Justice in the New York Field Office for Customs Litigation advises that he dissents from the views stated herein and endorses the principle that the United States should have the same right of counterclaim in the Customs Court it now enjoys in other Courts.

H.R. 6453

To amend the Tariff Schedules of the United States regarding the rate of duty that may be proclaimed by the President with respect to sugar imports.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 6453, if enacted, would amend clause (i) of the proviso to headnote 2 of the headnotes to subpart A, part 10, schedule 1, of the Tariff Schedules of the United States (TSUS). Headnote 2 provides authority for the President to establish rates of duty and quotas for sugars, sirups, and molasses, provided for in TSUS items 155.20 and 155.30, and to modify such rates of duty and quotas, if the President finds and proclaims that such action "will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreements on Tariffs and Trade." Headnote 2 was originally negotiated as a condition precedent to implementation of concessions reducing sugar duties; i.e., that such tariff concessions would only be effective while quota provisions under title II of the Sugar Act of 1948, as amended and extended, or substantially equivalent legislation was in effect in the United States. The headnote was incorporated in the TSUS in the "Kennedy Round" of multilateral trade negotiations, effective January 1, 1968. Quota provisions under the Sugar Act of 1948, as amended and extended, expired December 31, 1974.

Headnote 2 prescribes the lower limits to the President's authority to establish the rates of duty in column 1 for TSUS items 155.20 and 155.30, as the rates in effect on January 1, 1968 [viz., "0.6625¢ per lb. less 0.009375¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.428125¢ per lb."; (e.g., "0.625¢ per lb." for 96-degree raw sugar)]. This legislation would reduce the lower limit to "0.01¢ per lb." raw value [or, in terms of the rate formula, "0.0106¢ per lb. less 0.00015¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.00685¢ per lb."]. This modification by intself does not lower the rate of duty, but it does provide the President with authority to lower the rate of duty to the new limit; i.e., "0.01¢ per lb.", raw value.

DESCRIPTION AND USES

The proposed amendment to headnote 2 would affect TSUS items 155.20 and 155.30 under which U.S. sugar imports are classified. TSUS item 155.20 provides for raw and refined sugar, and TSUS item 155.30 provides for liquid sugar and other sugar sirups. Most U.S. sugar imports are raw sugar provided for in TSUS item 155.20.

Sugar is derived from the juice of sugar cane or sugar beets. It is present in these plants in the form of dissolved sucrose. Most sugar is marketed to consumers in refined form as pure granulated or powdered sucrose. Substantial quantities also reach consumers as liquid sugar (sucrose dissolved in water) or in forms not chemically pure, such as brown sugar and invert sugar sirups, or as blends of sucrose with simpler sugars such as glucose or fructose.

Sugar cane is a perennial subtropical plant which is cut and milled to obtain sugar cane juice. Through a process of filtering, evaporating, and centrifuging this juice, a product consisting of large sucrose crystals coated with molasses, called raw sugar, is produced. Raw sugar derived from sugar cane is the principal "sugar" actually shipped in world trade. Raw sugar is generally refined near consumption centers through additional melting, filtering, evaporating, and centrifuging to yield the refined white (100 percent pure sucrose) sugar of commerce.

Sugar beets are annual temperate zone plants usually grown in rotation with other crops (to avoid disease and pest problems from growing two beet crops

successively in the same field). Most sugar beets, including those grown in the United States, are converted directly into refined sugar. However, sugar beets grown in some countries are used to produce an intermediate product known as raw beet sugar. The refined sugar product derived from sugar beets is not distinguishable from that of sugar cane inasmuch as both are virtually chemically pure sucrose.

The overwhelming use of sugar in the United States is for human consumption, although some is used in nonfood uses. Sugar is primarily a caloric sweetening agent, but has preservative uses. In the United States about one-third of the sugar consumed goes to households and institutional users and two-thirds to industrial users (table 1).

U.S. TARIFF

The TSUS does not attempt to identify sugars, sirups, and molasses separately by name for classification purposes. Rather, products of this description are classified in accordance with their physical and chemical properties, regardless of the name by which a particular product may be called. Under the description "sugars, sirups, and molasses derived from sugar cane or beets, principally of crystalline structure or in dry amorphous form" (TSUS item 155.20) are classified all the solid sugars of commerce, including raw and refined sugar. Under the description "sugar, sirups, and molasses, derived from sugar cane or sugar beets, not principally of crystalline structure and not in dry amorphous form, containing soluble non-sugar solids (excluding any foreign substance that may have been added or developed in the product) equal to 6 percent or less by weight of the total soluble solids" (TSUS item 155.30) are classified liquid sugar and invert sugar sirup.

Pursuant to Presidential Proclamation No. 4539, issued November 11, 1977, the column 1 rate of duty for TSUS item 155.20 was established at "2.98125¢ per lb. less 0.0421875¢ per lb. for each degree under 100 degrees (an fractions of a degree in proportion) but not less than 1.9265625¢ per lb." By virute of general headnote 4(b) of the TSUS, the column 2 rate was established at the same level. The rate formula provides a duty of "2.8125¢ per lb." for 96-degree raw sugar (the term "degree" means sugar degree as determined by polariscopic test). Imports of sugar from all countries into the United States were subject to these rates of duty, except for imports from certain countries which are designated beneficiaries eligible for duty-free treatment under the Generalized System of Preferences (GSP).

Articles classified under TSUS item 155.30 are dutiable on total sugars at the rate per pound applicable under TSUS item 155.20 to sugar testing 100 degrees. All designated beneficiaries for the GSP are eligible for duty-free treatment on imports under TSUS item 155.30.

On February 1, 1980, the President signed Proclamation No. 4720 which, pursuant to headnote 2, subpart A, part 10, schedule 1, of the TSUS, reduced the column 1 rate of duty for TSUS item 155.20 to "0.6625¢ per lb. less 0.009375¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.428125¢ per lb.". The column 2 rate of duty wa reduced to "1.9875¢ per lb. less 0.028125¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 1.284375¢ per lb.". The rates of duty for TSUS item 155.30 were reduced by the same rate, in accordance with the reductions for TSUS item 15.520. These reductions in rates of duty were effective as of February 1, 1980.

COUNTERVAILING DUTIES ON SUGAR IMPORTS FROM THE EUROPEAN COMMUNITY

On July 30, 1978, the U.S. Customs Service announced a final determination that sugar from the European Community, provided for in TSUS items 155.20 and 155.30, which benefited from bounties or grants was being entered into the United States. Such sugar, imported directly or indirectly from the European Community, if entered or withdrawn from warehouse for consumption on or after July 31, 1978, is subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. The net amount of such bounties or grants was ascertained and estimated to be 10.8 cents per pound of sugar.

ANTIDUMPING DUTIES ON SUGAR IMPORTS FROM BELGIUM, FRANCE, AND WEST GERMANY

On May 16, 1979, the U.S. International Trade Commission reported to the Secretary of the Treasury its unanimous determination that an industry in the United States is being injured by reason of the importation of sugar provided for in TSUS items 155.20 and 155.30 from Belgium, France, and West Germany, which the Department of the Treasury had determined is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. The Commission's determinations resulted in the imposition of dumping duties on any LTFV sugar imports from the countries in question, entered on or after February 12, 1979. The weighted average dumping margins found by Treasury for the three countries range from 51 to 55 percent of the home-market prices. There have been virtually no imports of sugar from the European Community since countervailing duties were imposed on July 31, 1978.

On March 6, 1980, the U.S. International Trade Commission determined under section 735(b) of the Tariff Act of 1930 that an industry in the United States is materially injured by reason of imports of sugars and sirups from Canada which are being, or are likely to be, sold at less than fair value.[1] By virtue of this affirmative determination of the Commission, the U.S. Customs Service will assess antidumping duties as appropriate.

IMPORT QUOTAS

On November 16, 1974, when the President, by Proclamation No. 4334, established rates of duty for sugar provided for in TSUS items 155.20 and 155.30 pursuant to headnote 2, subpart A, part 10, schedule 1 of the TSUS, the President also established a global quota of 7 million short tons, raw value, for such imports. At that time, it was announced that the quota was not intended to restrict normal import levels. On November 30, 1978, the President signed Proclamation No. 4610, which lowered the global quota to 6.9 million short tons, raw value. In addition, the quota was allocated with small quantities for the products of Taiwan and for the products of all other countries, other than members at that time of the International Sugar Agreement (1977), for calendar years 1978 and 1979. By Presidential Proclamation No. 4663, of May 24, 1979, the power to allocate these quotas was delegated to the Secretary of State or his designee, in order to make it possible to allocate the quotas in accordance with the changing membership of the International Sugar Agreement (1977) and that Agreement's requirements for restrictions on imports from nonmembers. At the time of the original quota announcement, the quota for nonmembers (other than Taiwan) had already been filled which, in effect, made the quota restriction an embargo on further imports from nonmember countries until the end of 1979.

SECTION 22 IMPORT FEES

Presidential Proclamation No. 4547, issued January 20, 1978, pursuant to section 22 of the Agricultural Adjustment Act, as amended, provided for additional import fees for sugars provided for in TSUS items 155.20 and 155.30. This modified certain fees previously established under Presidential Proclamation 4538, issued November 11, 1977. For sugar provided for in TSUS item 155.20, "to be further refined or improved in quality," the additional import fee under TSUS item 956.15 was "2.70¢ per lb.". For sugar in TSUS item 155.20, "not to be further refined or improved in quality," and for sugar in TSUS item 155.30 (based on total sugars content), the additional import fees under TSUS items 956.05 and 957.15, respectively, were "3.22¢ per lb.". These additional import fees cannot exceed 50 percent ad valorem. An exception was provided for sugar entered for the production of polyhydric alcohols (i.e., sorbitol and mannitol) not for use in human consumption. Designated beneficiaries for the GSP are not eligible for duty-free treatment with regard to section 22 fees. These fees were established under the emergency powers of the President pursuant to section 22, pending receipt by the President of the U.S. International Trade Commission's report (issued April 17, 1978).

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[1] Sugars and Sirups from Canada, USITC Investigation No. 731-TA-3 (Final). (USITC Pub. No. 1047).

TABLE 1.—REFINED SUGAR: U.S. DELIVERIES, BY INDUSTRIAL AND NONINDUSTRIAL USERS, AND BY QUARTERS, JANUARY 1974 TO SEPTEMBER 1979

[In millions of pounds]

Period	Industrial users								Nonindustrial users						
	Bakery, cereal, and allied products	Confectionery and related products	Ice cream and dairy products	Beverages	Canned, bottled, frozen foods; jams, jellies, etc.	Multiple and all other food uses	Nonfood uses	Total	Hotels, restaurants, and institutions	Wholesale grocers, jobbers, and sugar dealers	Retail grocers, chain-stores, and supermarkets	All other deliveries	Total	Unspecified	Total
1974:															
Jan.-Mar.	783	566	292	1,086	410	265	70	3,472	46	947	631	52	1,677	0	5,149
Apr.-June	737	530	320	1,309	462	238	66	3,662	46	1,035	671	67	1,818	0	5,480
July-Sept	748	523	307	1,323	715	277	63	3,955	54	1,134	780	58	2,026	0	5,981
Oct.-Dec	617	418	221	982	311	248	57	2,854	36	888	625	64	1,614	0	4,468
Total	2,886	2,037	1,140	4,699	1,898	1,028	256	13,944	181	4,004	2,707	242	7,135	0	21,079
1975															
Jan.-Mar	500	315	170	787	199	188	32	2,191	33	518	379	43	973	85	3,250
Apr.-June	601	379	278	1,085	337	250	41	2,971	45	979	646	37	1,706	140	4,816
July-Sept	653	421	289	1,214	588	276	44	3,484	34	1,243	767	46	2,039	186	5,760
Oct.-Dec	622	419	239	953	280	223	50	2,786	31	970	671	38	1,709	187	4,682
Total	2,376	1,533	976	4,039	1,405	936	168	11,432	142	3,709	2,463	164	6,478	636	18,545
1976:															
Jan.-Mar	648	462	247	961	278	254	50	2,899	26	877	540	48	1,492	249	4,640
Apr.-June	610	429	281	1,186	348	285	54	3,191	36	1,016	613	65	1,729	281	5,202
July-Sept	613	415	286	1,198	480	229	46	3,265	33	1,223	754	69	2,079	267	5,612
Oct.-Dec	587	428	222	981	259	212	46	2,735	32	952	634	78	1,696	202	4,632
Total	2,457	1,733	1,035	4,326	1,364	979	195	12,091	128	4,068	2,540	260	6,996	1,000	20,087
1977:															
Jan.-Mar	685	470	256	1,016	295	254	53	3,029	33	970	577	73	1,653	177	4,859
Apr.-June	687	460	302	1,314	354	237	50	3,403	34	978	587	79	1,677	124	5,205
July-Sept	660	453	292	1,353	494	297	46	3,594	33	1,084	687	66	1,871	252	5,716
Oct.-Dec	604	436	233	1,056	274	253	50	2,907	38	1,034	673	72	1,818	199	4,924
Total	2,636	1,819	1,083	4,739	1,417	1,041	199	12,933	140	4,066	2,524	290	7,019	752	20,704

1978:															
Jan.-Mar.	667	453	264	1,122	283	197	68	3,054	46	843	472	55	1,416	68	4,538
Apr.-June	652	447	314	1,435	350	207	72	3,477	51	997	530	68	1,695	73	5,245
July-Sept	643	444	273	1,448	427	195	108	3,539	57	1,141	682	70	1,951	90	5,580
Oct.-Dec.	604	445	226	1,111	284	215	68	2.953	54	944	602	54	1,655	83	4,691
Total	2,566	1,789	1,038	5,154	1,344	814	317	13,023	208	3,926	2,336	247	6,717	314	20,054
1979:															
Jan.-Mar.	656	458	201	1,135	274	206	57	2,987	47	972	544	65	1,628	112	4,727
Apr.-June	581	401	249	1,242	308	204	57	3,043	60	919	558	84	1,621	224	4,888
July-Sept	599	438	261	1,223	433	254	58	3,266	47	1,035	668	92	1,842	223	5,331

Note: Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Agriculture.

On December 28, 1978 the President signed Proclamation No. 4631, in response to the Commission's report pursuant to section 22, establishing a system of variable import fees to be managed by the Secretary of Agriculture. The system provides that the import fees be adjusted quarterly on the basis of the average of the daily spot (world) price quotations for raw sugar for the first 20 consecutive market days preceding the 20th day of the month preceding each calendar quarter and, automatically, whenever the world price of sugar plus duties, fees, and attributed c.i.f. costs varies from a price objective of 15 cents per pound by more than 1 cent per pound.

On the basis of this system, the Secretary of Agriculture established import fees for January–March 1979 of "3.35¢ per lb." for TSUS item 956.15, and "3.87¢ per lb." for TSUS items 956.05 and 957.15. For April–June 1979, the import fees were lowered to "2.76¢ per lb." for TSUS item 956.15, and "3.28¢ per lb." for TSUS items 956.05 and 957.15. For July–September 1979, the import fees were raised to "3.36¢ per lb." for TSUS item 956.15 and "3.88¢ per lb." for TSUS items 956.05 and 957.15. However, as a result of the provision for automatic adjustment of the import fees, on September 1, 1979, the import fees were revised downward to "2.36¢ per lb." and "2.88¢ per lb.", respectively. For September–December 1979, import fees were established at "1.76¢ per lb." for TSUS item 956.15 and "2.28¢ per lb." for TSUS items 956.05 and 957.15. On October 18, 1979, these import fees were revised downward to "0.76¢ per lb." and "1.28¢ per lb.", respectively, and on October 24, 1979, were revised again to "zero" for TSUS item 956.15 and "0.52¢ per lb." for TSUS items 956.05 and 957.15, the minimum level allowed under Presidential Proclamation No. 4631.

U.S. SUGAR BEET GROWERS AND BEET SUGAR PROCESSORS

Sugar beets are currently produced in 16 States. The number of farms producing sugar beets in 1978/79 most likely has decreased from the 12,000 farms producing sugar beets in 1973/74 (the last year for which official statistics are available). For 1978/79, estimated U.S. sugar beet acreage is 1,119,300 acres, down from 1,272,00 acres in 1977/78 (table 2). Sugar beets are generally grown by farmers under contracts with best sugar processors which call for growers to deliver beets from a given acreage to processors, and for processors to reimburse the growers on a basis which includes a percentage of the return processors receive from the sale of refined sugar. In 1979, there were 44 beet sugar factories owned by 13 companies or cooperatives operating in the sugar-beet-producing regions in the United States.

CANE SUGAR REFINERS

There are 22 cane sugar refineries in the United States, located mainly on the east and gulf coasts. The 22 cane refineries are operated by 12 companies and one cooperative. Cane sugar refineries provide about 70 percent of the refined sugar consumed in the U.S. market. In 1978, U.S. cane sugar refineries produced 7.35 million short tons, raw value, of sugar. Cane sugar refiners are the principal users of imports of raw sugar.

MAINLAND SUGAR CANE GROWERS AND MILLERS

Louisiana, Florida, and Texas are the principal mainland States producing sugar cane. The mainland cane-milling industry takes sugar cane from growers and processes it into raw sugar. Because it rapidly becomes difficult to recover sucrose from sugar cane as the time lengthens between cutting and milling, the cane mills are located close to the producing areas. In 1977/78, some 40 mainland cane-milling companies produced about 1.65 million tons of raw sugar, but production in 1978/79 is estimated to have declined to about 1.58 million tons.

OFFSHORE SUGAR CANE GROWERS AND MILLERS

Hawaii and Puerto Rico are offshore producers and millers of sugar cane. Hawaii is noted for having the highest yields of sugar can per acre in the world. In 1978, 99,000 acres of sugar cane were harvested in Hawaii on about 480 farms. There are 15 Hawaiian cane-milling companies which aiso produce nearly 95 percent of the sugar cane. Sugar is mostly marketed on the mainland through a cooperative marketing association—California & Hawaiian Sugar Co., which is owned by the 15 cane-milling companies.

TABLE 2.—SUGAR BEETS: U.S. ACREAGE AND PRODUCTION, BY STATES, CROP YEARS 1974–75 TO 1978–79[1]

State	1974–75	1975–76	1976–77	1977–78	1978–79[2]
	Acreage (thousand acres)				
California	326.3	312.0	217.0	193.4	214.0
Minnesota	196.0	248.0	260.0	263.0	244.0
Idaho	158.3	139.4	107.4	132.3	126.3
North Dakota	130.9	149.8	155.2	155.2	143.1
Michigan	91.4	91.4	85.5	91.5	89.0
Nebraska	96.0	84.5	67.7	76.0	73.0
Colorado	154.9	121.0	72.0	84.0	73.0
Wyoming	57.7	56.4	48.4	48.8	48.2
Montana	48.5	46.1	45.0	44.7	43.4
Texas	33.7	23.3	17.9	23.6	19.5
Ohio	39.2	36.5	22.5	23.3	13.7
Arizona	17.0	17.0	12.8	15.0	11.4
Kansas	43.0	38.0	24.0	26.0	11.4
Oregon	17.9	14.5	8.2	8.9	6.7
New Mexico	.9	.9	1.2	1.8	2.0
Utah	22.5	18.0	9.8	12.6	1.5
Washington	82.4	76.5	61.6	68.5	0
Maine	0	5.5	0	0	0
Total	1,516.6	1,478.8	1,216.2	1,268.6	1,120.2
	Production (thousand short tons)				
California	8,892	8,912	5,664	4,682	5,731
Minnesota	2,783	3,026	4,732	4,971	3,782
Idaho	2,942	2,879	2,094	2,765	2,804
North Dakota	1,820	2,022	2,769	3,054	2,304
Michigan	1,755	1,540	1,796	1,770	1,558
Nebraska	1,776	1,690	1,354	1,368	1,460
Colorado	2,661	2,303	1,404	1,538	1,358
Wyoming	1,060	1,167	949	922	906
Montana	829	968	896	885	829
Texas	440	503	309	414	332
Ohio	777	617	457	394	266
Arizona	366	391	285	308	219
Kansas	667	749	401	442	213
Oregon	426	364	206	203	175
New Mexico	15	20	23	37	30
Utah	353	317	173	225	29
Washington	2,142	1,852	1,495	1,747	0
Maine	0	56	0	0	0
Total	29,704	29,386	25,007	25,725	21,996

[1] The crop year begins in September in all States except in California and lowland areas of Arizona, where it begins in March and April, respectively.
[2] Preliminary estimate.

Source: Compiled from official statistics of the U.S. Department of Agriculture.

Puerto Rican sugar production has declined severely over the last several years. The bulk of sugar cane acreage and most of the cane mills are owned, leased, or contracted for by the Sugar Corporation of Puerto Rico, a quasi-governmental corporation. In 1975/76, 12 sugar cane mills in Puerto Rico had a daily processing capacity of about 55,000 tons of sugar cane.

U.S. IMPORTERS AND SUGAR OPERATORS

Besides the can sugar refiners, which contract for the bulk of U.S. sugar imports, other importers and sugar operators are involved in the importation of raw or refined sugar. They import sugar and arrange for the sale and delivery of the commodity to buyers (mostly can sugar refiners). The need for the sugar operators' services arises because producers have sugar to sell. The sugar operators' services arises because producers have sugar to sell. The sugar operators' services consist of financing the transaction, chartering the transportation, arranging for loading, doing import and export documentation, delivering to buyers' docks, and taking the risk of price changes while these producers are being undertaken. The operators also engage in significant trading and hedging in commodities futures markets for sugar, and usually operate in the world

sugar trade outside the U.S. market. There are at least 16 sugar operators dealing in raw sugar and an unknown number of importers dealing in refined sugar for direct-consumption sales.

ALTERNATIVE SWEETENERS

The principal alternatives to sugar sweetener markets are corn-based sweeteners. They are derived from corn starch by hydrolysis, usually with enzyme processes. The products of this process include glucose sirups and anhydrous and monohydrate dextrose. However, a recently developed product, high-fructose sirup, which is derived from glucose sirup, has grown rapidly in use and has been highly competitive with sugar in certain applications. For example, the soft-drink industry is the largest industrial user of sugar but, since high-fructose sirups have become available, this industry has been using increasing amounts of this product as a substitute for sugar and for sugar and corn sirup blends. High-fructose sirup could eventually substitute for most sweetener uses that do not specifically require dry crystals, and it is estimated that high-fructose sirups will eventually supply a substantial portion of the industrial market for sweeteners in liquid application. While at their introduction, use of high-fructose sirups was limited because of lack of productive capacity, currently there are reports of excess processing capacity as a result of the coming on stream of substantial new capacity. It would appear that the ability to produce high-fructoce sirup has increased faster than the development of product formulations that could take advantage of its availability at prices lower than those for sugar.

There are 11 firms in the U.S. corn sweetener industry, operating 20 plants, most of which are located in the corn-producing States of the Midwest. Eleven of these plants produce high-fructose sirup.

U.S. PRODUCTION, IMPORTS, EXPORTS, AND CONSUMPTION

Table 3 provides data on U.S. production, imports, exports, ending stocks and consumption for the past five years. Because of rapidly changing prices of sugar, and changes in rates of duty during 1975–79, there has been no stable trend in any of these factors. Data on the component parts of U.S. wholesale prices for refined sugar is shown in table 4.

U.S. imports, by sources, for crop years 1974/75 to 1978/79 are shown in table 5. Leading sources of U.S. imports have been Brazil, the Dominican Republic, and the Philippines in recent years. Because the duties on sugar are specific duties in cents per pound, value data reported for U.S. sugar imports are considered unreliable.

REVENUE IMPACT OF THIS LEGISLATION

Enactment of this legislation, in itself, would have no revenue impact. However, if the President were to take action, using the additional authority provided by this legislation, the result would be reduced revenues for the Treasury. Based on the assumption that the President will reduce the rates of duty on sugar effective July 1, 1980 to the minimum rates of duty provided for in this legislation and based on the anticipated level of imports, the loss of revenue for 1980 would be the difference between current rates of duty and the minimum rates of duty multiplied by the quantity of dutiable imports anticipated in the matter half of 1980.

TABLE 3.—SUGAR: U.S. PRODUCTION, IMPORTS, EXPORTS, ENDING STOCKS AND CONSUMPTION, 1975–79

[In short tons, raw value]

Year	Production	Imports	Exports	Ending stocks	Consumption
1975	6,610,673	3,882,580	147,287	2,902,874	10,176,189
1976	7,129,812	4,658,038	67,566	3,512,563	11,100,636
1977	6,372,573	6,138,048	34,959	4,544,450	11,419,058
1978	5,809,798	4,682,900	47,525	3,862,790	11,089,385
1979 [1]	6,010,802	5,026,297	73,473	3,833,043	10,988,877

[1] Preliminary.

Source: Compiled from officia statistics of the U.S. Department of Agriculture.

TABLE 4.—REFINED SUGAR: COMPONENT PARTS OF U.S. WHOLESALE PRICE, BY MONTHS AND ANNUAL AVERAGE, 1975–79

[In cents per pound]

Period	World price, f.o.b., Caribbean [1]	Premium or discount [2]	Foreign suppliers' price [3]	Cost of freight and insurance [4]	Duty [5]	Sec. 22 import fee [6]	U.S. price, duty paid, New York [7]	Cost to refiner after refining loss [8]	Spread for refining [9]	Wholesale price, Northeast [10]
1975:										
January	38.33	—1.47	36.86	0.85	0.6250		38.33	41.40	11.55	52.95
February	33.69	.88	34.57	.87	.6250		36.07	38.96	10.01	48.96
March	26.50	.53	27.03	.87	.6250		28.53	30.81	9.69	40.50
April	24.15	.42	24.58	.87	.6250		26.07	28.16	8.85	37.01
May	17.38	.46	17.84	.80	.6250		19.27	20.81	11.42	32.23
June	13.83	.72	14.54	.79	.6250		15.96	17.24	8.33	25.57
July	17.07	1.41	18.47	.79	.6250		19.89	21.48	5.41	26.89
August	18.73	1.02	19.74	.74	.6250		21.11	22.80	4.25	27.05
September	15.45	.55	16.00	.77	.6250		17.39	18.79	4.51	23.30
October	14.09	—.04	14.05	.78	.6250		15.45	16.69	4.47	21.15
November	13.40	.01	13.41	.78	.6250		14.82	16.00	4.84	20.84
December	13.29	—.06	13.23	.78	.6250		14.64	15.81	4.72	20.53
Average	20.50	.36	20.87	.81	.6250		22.29	24.08	7.35	31.43
1976:										
January	14.04	0	14.04	.76	.6250		15.42	16.66	4.65	21.31
February	13.52	.14	13.66	.76	.6250		15.04	16.25	4.62	20.86
March	14.92	—.10	14.82	.82	.6250		16.27	17.57	4.63	22.20
April	14.06	.07	14.13	.82	.6250		15.58	16.82	4.59	21.41
May	14.58	—.06	14.52	.82	.6250		15.97	17.24	4.63	21.87
June	12.99	—.01	12.97	.80	.6250		14.40	15.55	4.67	20.22
July	13.21	—.05	13.17	.80	.6250		14.59	15.76	4.70	20.46
August	9.99	—.10	9.90	.79	.6250		11.31	12.22	4.82	17.04
September	8.16	—.24	7.91	.79	1.1012		9.80	10.58	5.27	15.85
October	8.03	—.10	7.93	.84	1.8750		10.65	11.50	5.40	16.90
November	7.91	—.12	7.79	.80	1.8750		10.46	11.29	4.99	16.28
December	7.54	.01	7.55	.80	1.8750		10.22	11.04	4.93	15.97
Average	11.60	—.05	11.55	.80	.9677		13.32	14.39	4.82	19.21

TABLE 4.—REFINED SUGAR: COMPONENT PARTS OF U.S. WHOLESALE PRICE, BY MONTHS AND ANNUAL AVERAGE, 1975–79—Continued

[In cents per pound]

Period	World price, f.o.b., Caribbean [1]	Premium or discount [2]	Foreign suppliers' price [3]	Cost of freight and insurance [4]	Duty [5]	Sec. 22 import fee [6]	U.S. price, duty paid, New York [7]	Cost to refiner after refining loss [8]	Spread for refining [9]	Wholesale price, Northeast [10]
1977:										
January	8.37	—.08	8.29	.79	1.8750	----------	10.95	11.83	4.87	16.70
February	8.56	—.17	8.39	.79	1.8750	----------	11.06	11.94	5.00	16.94
March	8.91	.04	8.96	.83	1.8750	----------	11.66	12.60	4.85	17.45
April	10.10	—.18	9.92	.78	1.8750	----------	12.57	13.57	4.95	18.52
May	8.94	—.24	8.70	.76	1.8750	----------	11.34	12.25	5.27	17.52
June	7.82	—.19	7.64	.76	1.8750	----------	10.28	11.10	5.30	16.40
July	7.38	.18	7.55	.73	1.8750	----------	10.15	10.97	5.16	16.13
August	7.61	.99	8.60	.73	1.8750	----------	11.21	12.10	5.28	17.38
September	7.30	.51	7.81	.73	1.8750	----------	10.41	11.25	5.32	16.57
October	7.08	.51	7.59	.78	1.8750	----------	10.24	11.06	5.29	16.35
November	7.07	.15	7.22	.86	2.4716	1.58	12.13	13.10	5.40	18.50
December	8.09	0	8.09	.86	2.8125	1.74	13.50	14.58	4.30	18.88
Average	8.10	.13	8.23	.78	2.0020	.28	11.30	12.20	5.09	17.29
1978:										
January	8.77	0	8.77	.77	2.8125	1.80	14.15	15.28	4.57	19.85
February	8.48	0	8.48	.81	2.8125	2.70	14.81	15.99	4.55	20.54
March	7.74	0	7.74	.81	2.8125	2.70	14.07	15.19	4.84	20.03
April	7.59	0	7.59	.81	2.8125	2.70	13.91	15.02	5.16	20.18
May	7.33	0	7.33	.79	2.8125	2.70	13.63	14.72	5.59	20.31
June	7.23	0	7.23	.81	2.8125	2.70	13.56	14.64	5.49	20.13
July	6.43	0	6.43	.79	2.8125	2.70	12.74	13.76	6.14	19.90
August	7.08	0	7.08	.78	2.8125	2.70	13.38	14.45	6.25	20.70
September	8.17	0	8.17	.79	2.8125	2.70	14.48	15.64	6.19	21.83
October	8.96	0	8.96	.86	2.8125	2.70	15.33	16.55	6.10	22.65
November	8.01	0	8.01	.88	2.8125	2.70	14.40	15.56	6.49	22.05
December	8.00	0	8.00	.88	2.8125	2.70	14.39	15.54	6.73	22.27
Average	7.81	0	7.81	.82	2.8125	2.62	14.07	15.19	5.68	20.87

1979:										
January	7.57	0	7.57	.84	2.8125	3.35	14.58	15.74	6.53	22.27
February	8.23	0	8.23	.83	2.8125	3.35	15.22	16.44	6.00	22.44
March	8.46	0	8.46	.98	2.8125	3.35	15.60	16.85	5.69	22.54
April	7.82	0	7.82	1.02	2.8125	2.76	14.42	15.57	6.78	22.35
May	7.85	0	7.85	1.16	2.8125	2.76	14.58	15.75	6.78	22.53
June	8.14	0	8.14	1.16	2.8125	2.76	14.87	16.06	6.65	22.71
July	8.52	0	8.52	1.13	2.8125	3.36	15.82	17.09	5.87	22.96
August	8.84	−.21	8.63	1.05	2.8125	3.36	15.85	17.11	6.68	23.79
September	9.80	−.30	9.50	1.05	2.8125	2.36	15.72	16.98	6.52	23.50
October	11.93	−1.05	10.88	1.06	2.8125	1.17	15.93	17.20	6.14	23.34
November	13.69	−1.33	12.37	1.11	2.8125	0	16.29	17.59	5.89	23.48
December	14.86	−.51	14.36	1.13	2.8125	0	18.30	19.76	6.71	26.47
Average	9.59	−.29	9.31	1.04	2.8125	2.41	15.58	16.82	6.38	23.20

[1] Data are spot prices, contract No. 11, New York Coffee and Sugar Exchange, except from Nov. 3, 1977, to Aug. 17, 1979, when data are daily world prices as determined by the International Sugar Organization.

[2] Premium or discount assumed to be zero from Nov. 3, 1977, to Aug. 17, 1977.

[3] Foreign suppliers' price is U.S. price less duties and cost of insurance and freight, except from Nov. 3, 1977, to Aug. 17, 1979.

[4] Data supplied by Lamborn, Inc.

[5] Duty for 96° raw sugar increased Sept. 21, 1976, and Nov. 11, 1977.

[6] Sec. 22 import fee assumed to be the difference between world price plus cost of insurance and freight and duties and the price objective of 13.5 cents per pound from Nov. 11, 1977, to Jan. 20, 1978.

[7] Data are spot prices, contract No. 12, New York Coffee and Sugar Exchange, except from Nov. 3, 1977, to Aug. 17, 1979, when data are daily world prices as determined by the International Sugar Organization plus cost of insurance and freight and duties.

[8] Refining loss calculated from U.S. price, assuming that 108 lb of 96° raw sugar is required to produce 100 lb of refined sugar.

[9] Spread for refining includes refining costs and profits, if any, for cane sugar refiners. Includes excise tax of 0.53 cent per pound from Jan. 1, to June 30, 1975.

[10] Data are wholesale list prices for refined sugar in 100-lb bags, Northeastern United States.

Note: Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Agriculture, except as noted.

TABLE 5.—SUGAR: U.S. IMPORTS, BY SOURCES, CROP YEARS 1974–75 TO 1978–79[1]

[In short tons, raw value]

Source	1974–75	1975–76	1976–77	1977–78	1978–79
Brazil	566,756	0	183,287	756,087	1,233,303
Dominican Republic	737,007	707,683	1,137,583	869,724	768,894
Philippines	570,469	733,290	1,127,117	1,105,438	562,116
Argentina	138,038	129,343	122,792	300,776	292,719
Peru	257,303	370,856	266,667	269,406	212,904
West Indies[2]	208,867	252,825	182,317	140,982	181,852
Guatemala	60,606	240,096	376,534	153,469	156,833
El Salvador	108,029	133,972	135,852	149,740	136,350
Panama	91,421	103,754	124,213	111,148	127,648
Nicaragua	70,358	153,328	126,597	107,543	121,621
Mexico	94,100	411	370	186	113,052
Australia	433,919	333,563	468,014	400,859	111,244
Canada	25,927	50,786	87,068	131,484	110,996
Ecuador	51,730	63,680	48,441	11,774	97,969
Fiji	34,560	0	0	30,307	97,476
Mauritius	48,882	0	70,622	82,151	87,807
Swaziland	61,333	17,002	46,461	94,436	87,123
South Africa	106,200	134,602	237,539	55,543	66,671
Bolivia	5,714	48,836	25,343	86,466	64,899
Honduras	9,740	0	28,117	17,781	59,829
Thailand	45,525	148,046	0	15,900	58,296
Belize	60,096	14,349	32,222	75,388	55,077
Mozambique	15,090	11,979	103,462	26,630	54,068
Costa Rica	54,017	59,953	103,532	78,318	49,109
Malawi	36,859	0	29,202	40,548	41,719
Taiwan	116,287	138,467	86,047	56,594	28,200
Colombia	130,604	125,923	28,185	100,129	13,281
Romania	0	0	0	0	13,209
Haiti	23,307	6,218	0	5,757	11,287
Madagascar	13,088	26,422	12,052	14,180	9,724
Korea	30	11,362	451	1,036	354
India	74,894	317,204	32	57	15
Netherlands	22	1,501	37	0	7
Sweden	2	1	3	3	2
Ireland	0	0	0	0	2
France	0	11,095	16,871	56,375	1
West Germany	2	904	0	36,445	0
Belgium	1	717	947	25,889	0
Uruguay	0	5,229	0	8,220	0
Denmark	2	0	963	2,136	0
United Kingdom	21	44	92	43	0
Hong Kong	0	0	1	3	0
Japan	0	0	0	1	0
Paraguay	10,792	10,070	1,159	0	0
Switzerland	0	745	0	0	0
Netherlands Antilles	1,279	17	0	0	0
Austria	10	16	0	0	0
Venezuela	24	0	0	0	0
Total	4,262,911	4,364,289	5,210,192	5,418,952	5,025,657

[1] Crop year beginning October 1 of each year.
[2] West Indies includes Barbados, Jamaica, Guyana, St. Kitt's, and Trinidad.

Source: Compiled from official statistics of the U.S. Department of Agriculture.

Currently, U.S. sugar imports are about 5,000,000 short tons, raw value, or 10 billion pounds, raw value. Since several countries which were ineligible for duty-free treatment for sugar under the GSP,[3] have become eligible for such duty-free treatment as of April 1, 1980, we estimate that only one-half of annual U.S. imports will be dutiable, or about 5 million pounds. The current rate of duty for sugar is equivalent to "0.625¢ per lb.", raw value. Since this legislation would set a lower limit of "0.01¢ per lb.", raw value, the maximum reduction in the rate of duty would be "0.615¢ per lb.", raw value, for 96-degree raw sugar. Hence, the revenue loss in 1980 would be approximately $15.4 million. If the maximum duty reduction is continued in subsequent years, the revenue loss would be about $30.75 million annually at the same import levels.

We also estimate that total revenues collected by Customs under these two TSUS items would decrease to about $0.5 million annually, if the maximum reduction is proclaimed.

[3] Ineligibility for the GSP resulted from application of the "competitive need" criteria pursuant to section 504 of the Trade Act of 1974.

TECHNICAL COMMENTS

We suggest that lines 3–6 be amended to read:

"That clause (i) of the proviso to headnote 2 of the headnotes to subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202, relating to sugars, sirups, and molasses provided for in items 155.20 or 155.30) is amended to read as follows:"

This suggestion is intended to provide a more precise reference to the amended clause and would clarify which TSUS items are affected by the amendment.

We also suggest that the language of the proposed clause (page 2, preceding line 1) be amended to read as follows (suggested additions or changes are italic):

"(i) That, if the President finds that a particular rate not lower than *0.01¢* per pound, raw value (*viz, 0.0106¢ per lb. less 0.00015¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not lower than 0.00685¢ per lb.*), limited by a particular quota, may be established for any article provided for in item 155.20 or 155.30, which will give due consideration to the interests *in* the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, *to be effective not later than the 90th day following the termination of the effectiveness of such legislation;*"

The term "raw value" is not defined with respect to sugar for purposes of duty assessment, although it is defined in headnote 3 for purposes of quota allocation. Our suggested specific rate formula in parentheses would define more precisely the proposed minimum rate of "0.01¢ per pound, raw value". If a definition is not provided in headnote 2, there could be argument as to the proper conversion factor for sugars of various degrees of polarization. In addition, in order to best implement the author's intent and maintain current duty assessment practice, we have specified the cutoff at 75 degrees of polarization i.e., "* * * but not lower than 0.00685¢ per lb.". Otherwise, in theory, the reduction of duty for each degree of polarization under 100 degrees could result in a zero tariff.

In H.R. 6453, as introduced, the underlined "in" was printed as "of". In addition, the last phrase of clause (i) of the proviso was omitted in H.R. 6453, as introduced, but probably should have been retained to show the relationship of this clause to the first paragraph of headnote 2, as originally enacted. We note that the authority for future Presidential action is clause (ii) of the proviso, not clause (i) which simply establishes the threshold for future proclamations; i.e., a "de minimis" duty of "0.01¢ per pound, raw value".

STATEMENT OF CONSUMERS FOR WORLD TRADE

Consumers for World Trade, a nonprofit organization formed in 1978 in support of open, competitive and fair international trade, heartily applauds Congressman Charles, A Vanik for introducing H.R. 6453. By enabling the President to drop the minimum sugar tariff from 0.625 cents per pound to 0, significant benefits will accrue to the American consumer in the form of lower prices for a wide variety of items in which sugar is a major ingredient. We believe this bill is an outstanding piece of legislation during these inflationary times and hope that it will be enacted into law in its present form without delay.

H.R. 6571

To amend the Tariff Act of 1930 to temporarily continue the present duty-free status of the cost of fish net and netting purchased and repaired in Panama.

DEPARTMENT OF THE TREASURY

This is in response to your request for the views of the Department of the Treasury on H.R. 6571, a bill to amend the Tariff Act of 1930 to temporarily continue the present duty-free status of the cost of fish net and netting purchased and repaired in Panama.

The purpose of H.R. 6571 is to add a new subsection (g) to section 466 of the Trade Act of 1930 (19 U.S.C. 1466) which would continue until December 31, 1981 the present duty-free status of fish net and netting purchased and repaired in Panama.

When the Canal Zone was under the jurisdiction of the United States, tuna fishermen could repair and purchase fish nets in the Canal Zone duty-free. Otherwise a return to the United States, notably San Diego, would be necessary to avoid assessment of duty. With the entry into force of the Panama Canal treaties, the Canal Zone is now under the jurisdiction of the Republic of Panama. Therefore, the duty-free treatment has ceased. Tuna fishermen must now return to the United States to repair nets or pay a 50 percent duty on the repairs made outside the United States. The bill would eliminate this situation by permitting the duty-free treatment to continue until December 31, 1981.

The Department of the Treasury opposes the enactment of H.R. 6571. Extending favorable treatment to Panama alone would violate the most-favored-nation principle of GATT. The Department understands that the Department of Commerce is recommending amendments to the bill to provide for most-favored-nation treatment. The Department concurs with this recommendation and would have no objection to H.R. 6571 if it were amended in this fashion.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 6571, a bill dealing with the tariff status of fish nets and net repair services purchased by operators of United States documented vessels in Panama.

Special provisions of our tariff legislation apply to equipment and repair services purchased in a foreign country by operators of United States documented vessels. Section 466 of the Tariff Act of 1930 (19 USC 1466) provides, in part, that "The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coastwise trade, or a vessel intended to be employed in such trade shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country . . . ."

We understand the purpose of the proposed legislation is, in effect, to continue the customs treatment that was applicable to purchases of fish nets and net repair services made in the Canal Zone by operators of United States documented vessels before the reversion of that territory to the jurisdiction of the Republic of Panama on October 1, 1979. Prior to the entry into force of the Panama Canal Treaty on that date, the Canal Zone was not regarded by the Department of the Treasury as a foreign country for the purposes of 19 USC 1466. Purchases of nets and net repair services in the Canal Zone by operators of United States documented vessels were, therefore, not subject to declaration, entry and payment of duty under 19 USC 1466. However, we note that, if such purchases were made on Republic of Panama territory outside the Canal Zone, they were regarded as being made in a foreign country and subject to declaration, entry and payment of duty under 19 USC 1466.

With the reversion of the Canal Zone to the jurisdiction of the Republic of Panama, purchases in the territory which the Canal Zone formerly encompassed are now regarded as being made in a foreign country (the Republic of Panama) and subject to declaration, entry and payment of duty. Under the proposed legislation, operators of United States documented vessels would be relieved of the obligation to pay duty on purchases of fish nets and net repair services made in the Republic of Panama (including the territory formerly encompassed by the Canal Zone) under 19 USC 1466. Thus, the proposed legislation would not only continue the duty free status of such purchases for the areas formerly under the jurisdiction of the United States but also extend such status to all such purchases wherever made in the Republic of Panama.

The Department of State recommends against the enactment of H.R. 6571 in its present form. It would extend duty free treatment to fish nets and net repair services purchased in the Republic of Panama without providing corresponding treatment for identical items from other countries. Such preferential treatment is contrary to the most favored nation requirement of the General Agreement on Tariffs and Trade and its enactment would contravene our longstanding policy against trade preferences other than those under a generalized system.

The Department of State would not recommend against enactment if the proposed legislation were amended to apply on a most favored nation basis and to limit the product scope of the bill to tuna nets and net repair services. We understand tuna nets are the only ones not presently available in adequate quantities from United States producers of fish nets. In such circumstances the obligation to pay duty imposes an added cost burden on the United States tuna fishing industry without improving the competitive position of United States fish net producers in the market.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

H.R. 6673

To suspend for a 3-year period the duty on water chestnuts and bamboo shoots.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

The purpose of H.R. 6673 is to suspend the duty on imports of certain water chestnuts and bamboo shoots for a period of 3 years, beginning on the date of enactment of the act. The water chestnuts which are the subject of this legislation are provided for in item 141.70 of the Tariff Schedules of the United States (TSUS), and the bamboo shoots, in item 141.78.

DESCRIPTION AND USES

Water chestnuts (*Eleocharis dulcis*) are the edible corms of certain aquatic plants originally cultivated throughout the temperate parts of eastern and southern China. They were first introduced into the United States in 1934. The plants are grasslike in appearance, growing to a height of 5 feet, and are cultivated somewhat like paddy rice. The corms have a chestnut brown skin color, a somewhat flattened spherical shape, and a firm, white flesh that is unusually crisp, like that of an apple. Corms vary considerably in size, depending upon growing conditions, with the most acceptable size being 1¼ inches or more in diameter. The bulk of imports of water chestnuts have been marketed in the United States in the canned form (item 141.70).

Water chestnuts are considered an ethnic food, being widely used in oriental cuisine, where they are standard ingredients of many Chinese dishes. Water chestnuts are best used in combinations with other foods and are sometimes used in a number of American dishes, such as omelets, gravies, meat and vegetable stews, soups, casseroles, and mixed salads.

Bamboo shoots are the tender, young shoots of the hardy Chinese and Japanese bamboos, which are dug when the shoot tips are just emerging from the soil surface. The shoots may range from a few inches to 10 inches in length, with a diameter of about 1 inch. The sprouts are crisp in texture and are usually without pronounced flavor; however, a number of varieties have tips with a bitter or acid flavor that is removed by boiling before eating.

The outer covering, or sheath layer, must be removed before the tips can be used. The more tender middle and upper shoot parts may be sliced into quarter-inch sections or cut into various shapes. Prepared bamboo shoots are used in food preparations consisting of various vegetables with or without meat. They also may be served with melted butter; some are pickled in vinegar. Bamboo shoots are considered an ethnic food, or specialty item, and quite often sell at a premium price.

TARIFF TREATMENT

The water chestnuts and bamboo shoots (in airtight containers) which would be affected by this legislation are provided for in items 141.70 and 141.78, respectively, of the TSUS.

Water chestnuts provided for in item 141.70 must be packed in salt, in brine, pickled, or otherwise prepared or preserved. They can be reduced in size (by slicing, etc.) but they cannot be dried, desiccated, or dehydrated.

The bamboo shoots provided for in item 141.78 cannot be packed in salt, in brine, or pickled, nor can they be dried, desiccated, or dehydrated, but they must be otherwise prepared or preserved and in airtight containers.

Neither of these items covers the vegetables in a fresh, chilled, or frozen state, unless they are prepared or preserved in some additional manner.

The current rates of duty for items 141.70 and 141.78 are shown in the following tabulatiton:

GSP	TSUS item No.	Articles	Rates of duty Col. 1	LDDC[1]	Col. 2
		Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in schedule 1, pt. 8, subpt. B of the Tariff Schedules of the United States):			
A*	141.70	Water chestnuts	14.5% ad val.	7% ad val.	35% ad val.
		Other:			
		(Packed in salt, in brine, or pickled:]			
	141.78	Other:			
		Bamboo shoots in airtight containers[2]	14.5% ad val.	9% ad val.	35% ad val.

[1] Effective Jan. 1, 1980, the rates of duty for imports from 27 countries listed as least developed developing countries (LDDC's) in general headnote 3(d)(i) of the TSUS are the same as the MTN final concession rates. In recent years, imports of these articles from LDDC's have been negligible.

[2] Pursuant to concessions granted in the MTN, bamboo shoots in airtight containers became separately provided for, effective Jan. 1, 1980. Prior to Jan. 1, 1980, bamboo shoots in airtight containers were provided for in former item 141.8180.

Imports of water chestnuts are currently eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP), unless such imports are the product of Taiwan. Taiwan is currently excluded from receiving GSP benefits on item 141.70, owing to the competitive need limitations set out in the Trade Act of 1974. Bamboo shoots in airtight containers are not eligible for GSP duty-free treatment.

Concessions were granted on items 141.70 and 141.78 by the United States in the Tokyo round of multilateral trade negotiations. The concession on water chestnuts (item 141.70) would reduce the 1979 rate of duty from 17.5 percent ad valorem to 7 percent ad valorem in four annual stages, the final stage to become effective January 1, 1983. The concession on bamboo shoots in airtight containers (item 141.78) would reduce the 1979 rate of duty from 17.5 percent ad valorem to 9 percent ad valorem in three annual stages, the final stage to become effective January 1, 1982.

STRUCTURE OF THE DOMESTIC INDUSTRY, DOMESTIC PRODUCTION, AND U.S. EXPORTS

The growing of water chestnuts and bamboo shoots for the canning industry requires significant amounts of hand labor, special technical experience, and the correct climatic conditions. For these reasons, it is believed that domestic commercial production in the United States of canned water chestnuts and canned bamboo shoots, if any, is limited. It is believed that exports of domestic merchandise of these articles are nil.

U.S. IMPORTS

U.S. imports of canned or otherwise prepared or preserved water chestnuts (item 141.70) during 1975–79, as reported in official statistics of the U.S. Department of Commerce, ranged from 8.8 million to 31.3 million pounds, as shown in the following tabulation:

Year	Quantity (thousands)	Value (thousands)
1975	8,808	$3,138
1976	22,061	8,676
1977	31,345	10,824
1978	22,024	6,906
1979	23,695	8,244

During each of these years, Taiwan was by far the dominant supplier of imports of water chestnuts. In 1979, Taiwan supplied 90 percent of the imports by quantity. Imports from the People's Republic of China, which up until January 1, 1980, were subject to column 2 rates of duty,[1] ranked second in importance, with 8 percent of the imports.

Data on U.S. imports of bamboo shoots in airtight containers item (141.78) first became separately available in January 1980. In that month, Taiwan supplied 9 percent of the 1.6 million pounds of imports, which were valued at $403,000; the People's Republic of China supplied 1 percent of the imports. It is believed that annual imports of bamboo shoots in airtight containers probably range from 15 million to 10 million pounds and have been supplied predominantly by Taiwan. Prior to January 1, 1980, imports of bamboo shoots in airtight containers were included in a statistical basket class of nonenumerated vegetables, otherwise prepared or preserved (former item 141.81); during 1975–79, imports from Taiwan under this description ranged fom 15 million to 16 million pounds annually.

There are numerous importers of bamboo shoots and water chestnuts in the United States, but the largest is La Choy Food Products of Archbold, Ohio.

APPARENT U.S. CONSUMPTION

The apparent U.S. consumption of canned water chestnuts and canned bamboo shoots is estimated on the basis of U.S. imports for consumption because domestic commercial production and exports of these articles are believed to be very small or nil, and data are not available. The apparent U.S. consumption of canned water chestnuts has averaged about 22 million pounds annually in recent years, and that for canned bamboo shoots has probably averaged less than 20 million pounds annually.

POTENTIAL ANNUAL LOSS OF REVENUE

The potential loss of revenue on imports of water chestnuts under item 141.70, on the basis of 1979 import data and applying the appropriate duty rates for 1980–82, is estimated to be $2,829,000. The potential annual losses would be as follows: $1,189,000 in 1980; $943,000 in 1981, and $697,000 in 1982 (all based on duty-free treatment for 12 months each year).

Because of the unavailability of specific statistical data on the bamboo shoots in item 141.78 prior to 1980, the estimate of the potential loss of revenue on this item is not as firm as might be desirable, but on the basis of annual imports of 20 million pounds with an average unit value of 30 cents per pound, it is estimated that the annual losses would be as follows: $870,000 in 1980, $690,000 in 1981, and $540,000 in 1982, for a total of $2,100,000.

Therefore, the combined loss of revenue for the 3-year period for both items could amount to approximately $4,929,000.

TECHNICAL COMMENTS

It is suggested that proposed items 903.50 and 903.55 be redesignated as 903.55 and 903.65, respectively, in order to maintain statistical continuity. Prior to January 1, 1980, item 903.50 was used to provide for duty-free treatment of certain horses.

The Committee might also wish to amend the effective period column to provide for a date certain for the termination of the provisions, as has been the customary practice of the committee.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 6673, a bill providing temporary duty-free entry for water chestnuts and bamboo shoots in airtight containers.

The Department of State has no objection to enactment of the proposed legislation. We understand there is no known commercial production of such chestnuts and shoots in the United States and consumers rely on imports to meet their requirements.

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[1] Effective Feb. 1, 1980, imports from the People's Republic of China became subject to most-favored-nation tariff treatment, and imports are subject to the column 1 rates of duty.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

STATEMENT OF ANDREW WHITELAW ON BEHALF OF RJR FOODS, INC.

My name is Andrew J. Whitelaw and I am Director, Regulatory Affairs and Product Safety for RJR Foods, Inc., a wholly-owned subsidiary of R. J. Reynolds Industries in Winston-Salem, N.C. My address is P.O. Box 3037, Winston-Salem, N.C. 27102. As you may know RJR Foods plants are situated throughout the country, and our best known products are Hawaiian Punch fruit punches, Chun King Oriental style foods, Patio Mexican style foods, Milk Mate chocolate flavored syrup, My-T-Fine puddings, Vermont Maid syrups, College In chicken products, Davis baking powder, and Brer Rabbit molasses. Most of these products are distributed and sold throughout the United States.

RJR Foods, Inc. supports passage of H.R. 6673, to provide for the temporary suspension of duties on water chestnuts and bamboo shoots for three years. To explain why this is important to RJR Foods, I will review the overall Oriental food market, discuss various unsuccessful attempts to develop a domestic industry, review current import regulations and discuss those reasons that we support passage of this bill.

You probably know that the RJR Foods, Inc. Chun King brand consists of 43 separate Oriental product items. Chun King is the largest retail marketer of frozen Oriental foods and the second largest marketer of canned Oriental foods in the U.S. For perspective, the canned Oriental food market represents a 180 million dollar business, and it is in the top ⅓ sales category of all dry grocery products. There is a significant and sustained consumer interest in this food category which, in 1979, grew twice as fast as the total for all other dry grocery items. Within the canned Oriental food category Chun King is a leading marketer of Oriental ingredient items with products designed to provide consumers with a complete selection of the highest quality ingredients. The degree of consumer interest in these items can be more fully appreciated when you realize that they are used by 32% of American households.

RJR Foods, Inc. conducted extensive research in an attempt to develop a domestic source of supply for both water chestnuts and bamboo shoots. These studies were not fruitful and I will briefly review them for you.

The Chinese water chestnut, has been grown around the world with its range restricted only by its need for a long frost-free growing period of approximately 220 days. Water chestnuts are a paddy crop and require flat, level terrain with light soil. Numerous experiments have been conducted on the domestic growing of water chestnuts by the USDA at Athens, Georgia and by RJR Foods in Georgia, Florida, North Carolina, and California. Indeed, an extensive three-year study by RJR Foods demonstrated that the water chestnut could be planted, harvested, and processed in the United States. The major deterrent to its successful production in the U.S. is a failure to achieve consistent yields of sufficient size to justify the cost of the land and provide an adequate financial return to the farmer. The U.S. studies indicated that yields never exceeded 10,000 lbs. per acre, while the normal yield in Taiwan is about 40,000 lbs. per acre. Although domestic studies are continuing, most recently by the TVA in Arkansas, the probability for developing an economical domestic source of the water chestnut is extremely low.

Bamboo shoots are somewhat different. There have been a few attempts to establish a bamboo plantation in the United States, but these have all been unsuccessful, including RJR Foods' extensive efforts at its experimental agricultural research station in North Carolina. Generally, the soil and climate conditions in the U.S. do not support adequate growth of bamboo. A five-year time span is required before the bamboo trees produce economical yields and approximately 1,000 acres of bamboo would be required just to supply our own needs of bamboo shoots. In today's economic environment, it is difficult to convince southern farmers to plant a marginal crop that has a five-year initial growing cycle with marginal yields. Therefore, Taiwan remains the only viable source of bamboo shoots.

Under the existing Tariff Schedules of the United States (19 USC 1202) water chestnuts and bamboo shoots are provided for in Part 8C, Schedule 1.

Water chestnuts come under a Most Favored Nation (MFN) rate of 14.5 percent ad valorem. They are, however, eligible for duty free treatment under the Generalized System of Preference (GSP) provisions covering import items from

developing countries. Taiwan would be eligible for GSP consideration were it not for the fact that it has been disqualified because it exceeds the competitive need under the Competitive Need Formula. Other countries are not a significant factor as a source of supply to the U.S.

Bamboo shoots also come under a Most Favored Nation (MFN) rate of 14.5 percent ad valorem, but bamboo shoots are not a Generalized System of Preferences (GSP) classified item and thus all imports are dutiable. Again, Taiwan and China are the only significant sources of supply.

RJR Foods, Inc. urges quick and favorable action on H.R. 6673 to suspend the duty on water chestnuts and bamboo shoots. As we have pointed out there is no viable domestic industry to protect, and attempts to establish a domestic industry have been unsuccessful. We have shown that bamboo shoots and water chestnuts are significant items in the grocery trade. By suspending the duty the public would have access to these products at a more favorable price.

Finally, it is clear that any measure that helps to reduce the cost of food to the American consumer in these inflationary times is thoroughly in keeping with national goals and federal policy. We urge your approval of H.R. 6673.

If you would like to go into any of these items in greater depth I will be happy to provide additional information on request.

H.R. 6687

To apply duty-free treatment under certain circumstances to articles produced in the insular possessions of the United States, and for other purposes.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 6687, if enacted, would amend General Headnote 3(a)(ii) of the Tariff Schedules of the United States (TSUS) to change the circumstances under which an article produced in an insular possession of the United States which contains foreign materials to the value of more than 50 percent may be accorded duty-free treatment upon importation into the customs territory of the United States.[1]

General Headnote 3(a)(i) sets forth the general rule that products of insular possessions which do not contain foreign materials to the value of more than 50 percent of their total value are exempt from duty. General Headnote 3(a)(ii) currently provides—

"[i]n determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 percent, no material shall be considered foreign which, *at the time such article is entered*, may be imported into the customs territory from a foreign country, other than Cuba or the Philippine Republic, and entered free of duty" [emphasis added].

The legislation would amend General Headnote 3(a)(ii) by providing that no material would be considered foreign for purposes of 3(a)(i) if that material was eligible for duty-free entry into the United States either at the time the finished article is entered into the customs territory of the United States or at the time such material is imported into the insular possession (so long as the material is incorporated into the article within 18 months after being imported into the insular possession).

The legislation would have no effect on most importations from the insular possessions; it is designed to address the unique situation whereby an article imported into the customs territory of the United States from an insular possession contains raw materials (to the value of more than 50 percent) from a beneficiary developing country which are eligible for duty-free entry into the United States under the Generalized System of Preferences (GSP) at the time of their importation into the insular possession but have lost such eligibility as of the time the article into which they were incorporated is imported into the customs territory of the United States. Currently, under General Headnote 3(a)(ii), such materials would be considered foreign, and the imported article from the insular possession would be dutiable at the appropriate rate provided for in column 1 of the TSUS. However, such materials would not be considered to be foreign under headnote 3(a)(ii) as amended by the legislation, and such articles could be imported free of duty from an insular possession, so long as the raw material was incorporated into the finished article within 18 months after being imported into the insular possession.

It is our understanding that this legislation was introduced at the behest of the Virgin Island's rum industry. Apparently, substantial quantities of molasses are inported into the Virgin Islands to be used in the production of rum (molasses constitutes more than 50 percent of the value of rum). The industry only imports molasses from beneficiary developing countries which are entitled to duty-free treatment under the GSP if such molasses is imported directly into the customs territory of the United States. The industry is concerned, however, that because of the political volatility of several of the countries they are dealing with and the possibility that certain of these countries may exceed the quantity limitations

[1] The customs territory of the United States is defined in General Headnote 2 of the TSUS to include "only the States, the District of Columbia, and Puerto Rico".

provided for in section 504(c)(1) of the Trade Act of 1974[2] (19 U.S.C. 2464(c)(1)), that one or more of these countries may lose their GSP eligibility with respect to molasses at some point between the time the molasses is imported into the Virgin Islands and the time that the rum produced from such molasses is exported to the customs territory of the United States, resulting in duty being assessed on the imported rum.

AFFECTED ARTICLES

Although the legislation is designed to address the concerns of the Virgin Islands rum industry, the amendment to General Headnote 3(a)(ii) would apply to all articles produced in U.S. insular possessions which contain foreign materials to the value of more than 50 percent of their total value. It is anticipated that for most such articles, the amendment will have no practical effect, since the situation rarely occurs whereby a raw material is eligible for duty-free treatment as of the time it is imported into an insular possession but not as of the time the article produced in the insular possession is exported to the customs territory of the United States. In addition to rum, among the principal articles imported into the customs territory of the United States from insular possessions are textile fabrics, chemicals and chemical products, fuel oil, and watch movements.

U.S. IMPORTS FROM INSULAR POSSESSIONS

Total values of U.S. imports from the various U.S. insular possessions are shown in the following table.

TECHNICAL COMMENTS

General Headnote 3(a)(ii), as amended by the legislation, would be more difficult for the U.S. Customs Service to administer than would the existing headnote because, while the date that the finished article is entered into the United States

U.S. IMPORTS FROM THE VIRGIN ISLANDS, GUAM ISLAND, AMERICAN SAMOA, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS, 1975-79

[In thousands of dollars]

Source	1975	1976	1977	1978	1979
Virgin Islands	1,614,233	1,936,460	2,525,914	2,431,035	2,884,481
Guam Island	17,357	11,997	7,507	2,298	8,701
American Somoa	45,432	52,628	57,266	105,713	126,302
Trust Territory of the Pacific Islands	1,978	5,341	5,886	10,400	14,961
Total	1,679,000	2,006,426	2,596,573	2,549,446	3,034,445

Source: Official statistics of the U.S. Department of Commerce.

Attached as an appendix to this report are tables from the Bureau of the Census Publication FT800 showing, for calendar year 1978, total shipments from U.S. possessions to the United States, by TSUSA commodities.

[2] This section provides—

"(c)(1) Whenever the President determines that any country—

"(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1974, or

"(B) except as provided in subsection (d), has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year,

then, not later than 60 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article, except that, if before such 60th day, the President determines and publishes in the Federal Register that, with respect to such country—

"(i) there has been an historical preferential trade relationship between the United States and such country,

"(ii) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

"(iii) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

then he may designate, or continue the designation of, such country as a beneficiary developing country with respect to such article."

is under the control of Customs, the date that the raw material is imported into the insular possession is not. It is expected that Customs would require some form of substantiating documentation on the part of the importer to verify the date of importation of the raw material into the insular possession.

APPENDIX A

EXCERPT FROM CENSUS PUBLICATION FT800 (ANNUAL 1978): TABLES SHOWING SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES, BY TSUSA COMMODITIES

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY

[See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics]

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
	VIRGIN ISLANDS			
	Total shipments	(—)	—	$2,438,972,175
	U.S. merchandise returned	(—)	—	7,937,568
	Products of Virgin Islands	(—)	—	2,431,034,607
118.3000	Malted milk and art of milk or cream, n.s.p.f	Lb	532,647	101,877
125.8000	Live plants suitable for planting n.s.p.f	No	42	1,050
127.1000	Garden and field seeds excp grass A forage crp seed n.s.p.f	Lb	350	1,838
168.4020	Rum, in containers, ea holding 1 gal or less	Pfg	31,288	115,311
168.4040	Rum, in containers, ea over 1 gal	Pfg	3,471,913	3,547,521
168.4040	Whiskey, scotch A irish in cont ov 1 gal ea	Pfg	8,953	8,950
270.2560	Books, n.s.p.f. wholly/prtly work of natl O domiciliary of U.S.	No	85	1,958
270.2580	Other books, not specially provided for	No	1,500	3,000
274.4500	X-ray film, exposed, whether or not developed	(—)	—	1,650
274.7040	Oth than lithograph printed matter, n.s.p.f	Lb	15	21,431
274.7300	Printed matter n.s.p.f. suitable for production of duty-free bks.	(—)	—	25,275
307.6415	Yarns of wool or hair nets not ov 5,599 yd per lb	Lb	18,023	131,087
310.6035	Yarns, nes M-M fibers, other	Lb	413	1,097
336.6043	Oth wool woven fab, n.s.p.f. ov 10 oz syd ov $2 lb	Syd	771,920	2,784,812
		Lb	695,676	—
336.6053	Oth wool woven fab, ov 8 n/ov 10 oz syd ov $2 lb	Syd	38,653	73,485
		Lb	21,243	—
336.6055	Oth wool woven fab, ov 10 n/ov 12 oz syd $2 lb	Syd	255,554	728,684
		Lb	188,066	—
336.6057	Oth wool woven fab, n.s.p.f. ov 12 oz syd ov $2 lb	Syd	180,147	665,406
		Lb	188,656	—
345.3020	Knit fab of wool, circular	Lb	34,743	255,207
345.5011	Knit fab of man-made fib containing ov 17 percent of wool by weight.	Lb	476,636	2,186,950
345.5035	Knit fab of man-made fib cir, double knit polyester	Lb	18,017	86,594
345.5055	Cir knit fab of MM fiber oth polyester	Lb	262	1,384
345.5075	Knit fab MM fib, polyester oth	Lb	21,631	73,599
359.3000	Tex nab n.s.p.f. of wool	Syd	8,405	28,292
		Lb	10,538	—
380.0340	Men's and boys cotton knit T-shirt exc all-white not ornmted.	Doz	40	1,205
		Lb	110	—
380.6611	Men's sport coats and jackets, wool, n/kn ov $4 lb	Doz	18	4,188
		Lb	250	—
401.1000	Benzene	Gal	5,285,074	3,978,169
401.7200	Toluene	Gal	33,316,977	18,791,262
401.7420	Para-xylene	Gal	2,208,178	317,721
401.7450	Xylene, other	Gal	28,634,093	15,120,492
406.1070	Specified vat dyes	Lb	136,850	1,203,293
406.1090	Coal tar color dyes, etc oth	Lb	31,900	288,346
406.5060	Solvent dyes	Lb	20,750	331,453
406.5080	Colors, vat dyes, stains (exc toners)	Lb	1,053,446	10,488,772
407.7220	Sulfamethazine	Lb	27,204	217,389
407.8506	Oth alkaloids, their salts and derivatives	Lb	2,420	7,426
407.8511	Ampicillin and its salts	Lb	5,698	229,033
407.8519	Oth antibiotics	Lb	33,777	3,864,603
407.8521	Sulfathiazole and sul fathiazole sodium	Lb	164,404	713,902
407.8523	Oth anti-infective sulfonamides n.e.s	Lb	30,044	393,642
407.8527	Anti-infective agents n.s.p.f	Lb	77	31,175
407.8536	Cardiovascular drugs exc alkaloids and their derivatives	Lb	651	50,215
407.8547	Propoxyphene hydrochloride	Lb	16,325	329,412
407.8549	Oth drugs affecting central nervous system	Lb	21,993	101,523
407.8555	Anti depressants, tranquilizers, oth psychotherapeutic agents.	Lb	2,586	38,992

See footnote at end of table.

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY—Continued

[See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics]

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
407.8576	Vitamin E (di-a-tocopheral and its esters)	Lb	1,196	6,773
407.8579	Drugs suitable for medicinal use oth than vitamins	Lb	1,013	51,948
407.8589	Oth vitamins, n.s.p.f	Lb	117,622	9,599,388
417.1240	Potassium sulfate (potash alum)	Lb	271,945,280	22,619,924
437.3220	Oth antibiotics-brythromycins	Lb	176,700	8,928
437.3230	Tetracyclines	Grm	275,642	50,525
438.0200	Drugs a related products in capsules, pill, etc. n.s.p.f	(1)	—	279,090
439.5030	Oth anti-infective agents	Lb	123	1,720
440.0000	Medicinal preps in capsules, ampoules, pills, jubes, etc. n.s.p.f.	(—)	—	8,529
461.1500	Bay rum or bay water	Lb	43,826	64,648
461.3500	Perfumes, colognes, and toilet water contain alcohol	Lb	1,113	7,581
461.4505	Shaving preps containing alcohol (incl after shave)	Lb	14,181	26,426
475.0510	Crude petrol shale etc. inc reconstd test un 25 deg api	Bbl	60,146	661,605
475.0525	Fuel oil a tcr un 25 degrees api, suv 100 deg ov 45 nov 125 secs.	Bbl	297,349	3,979,374
475.0535	Fuel oil a tcr un 25 deg api nes suv 100 deg a ov 125 sec	Bbl	80,308,044	911,373,867
475.0545	Fuel oil a tcr un 25 deg api, oth	Bbl	48,456	496,675
475.1010	Crude petroleum, shale oil inc reconst test 25 deg API A ov.	Bbl	374,364	4,782,698
475.1015	Fuel oil tcr 25 deg API A ov nes suv 100 deg und 45 sec	Bbl	54,882,347	542,601,199
475.1025	Fuel oil A tcr 25 deg API A ov 100 deg 45 sec n/ov 125 sec	Bbl	5,213,961	75,340,051
475.1035	Fuel oil tcr 25 deg, API A ov nes suv 100 deg A ov 125 sec.	Bbl	9,240,723	120,079,189
475.2520	Gasoline	Bbl	30,450,077	490,915,856
475.2530	Jet fuel, naptha-type	Bbl	4,838,757	69,341,831
475.2550	Jet fuel kerosene-type	Bbl	4,982,275	14,792,358
475.3000	Kerosene derived from shale oil, petroleum, or both	Bbl	3,928,134	58,565,569
534.8700	Earthen ware or stoneware, FG smokers, etc art, nes ov $10 doz.	Doc	47	3,289
612.1020	Copper waste and scrap, unalloyed	Clb	154,844	46,750
612.1040	Brass waste and scrap	Clb	144,463	48,815
		Glb	187,617	—
612.1060	Copper waste A scrap, alloyed nes	Clb	4,600	1,610
		Glb	4,700	—
618.1000	Aluminum waste A scrap	Lb	21,843	2,678
711.3400	Clinical thermometers	No	766,087	173,264
711.3700	Thermometers nspf	(—)	—	11,154
	Watch movts, assembled:			
716.0800	Having over 17 jewels	No	145,955	1,515,807
	Having a balance wheel and hairspring:			
716.1120	Ov 0.6 n/ov 0.8 inch wide n/ov 1 jewel	No	10,000	62,315
716.1420	Ov 1 but not ov 1.2 inch wide n/ov 1 jewel	No	3,800	27,655
716.2120	2 to 7 jewels ov 0.6–0.8 inch wide	No	1,800	15,930
716.2140	Ov 0.6–0.8 inch wide, without a bal wheel and a hairspring 2 to 7 jewels.	No	1,498	37,076
716.2420	Ov 1 but n/ov 1.2 inch wide, having a bal wheel and a hairspring 2 to 7 jewels.	No	7,000	57,430
716.2440	Ov 1 n/ov 1.2 inch wide, without a bal wheel and a hairspring 2 to 7 jewels.	No	499	10,816
	Having 17 jewels:			
716.3037	N/ov 0.6 inch wide, having a bal wheel and a hairspring.	No	1,313,783	11,116,232
716.3137	Ov 0.6 to 0.8 inch wide, having a bal wheel and a hairspring.	No	2,041,088	13,792,575
716.3157	Ov 0.6 to 0.8 inch wide, without a bal wheel and a hairspring.	No	959	7,344
716.3337	Ov 0.9 to 1 inch wide, having a bal wheel and a hairspring.	No	45,185	307,246
716.3434	Having 14 jewels, ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	650	4,262
716.3437	Ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	808,866	6,366,100
	Having 17 jewels:			
716.3537	Ov 1.2 to 1.5 inch wide, having a bal wheel and a hairspring.	No	23,603	241,480
716.3637	Ov 1.5 to 1.77 inch wide, having a bal wheel and a hairspring.	No	175	1,881
716.3655	Having 15 jewels, ov 1.5 to 1.77 without a bal wheel and a hairspring.	No	1,100	12,375
	Having 17 jewels:			
717.3037	Adj, not ov 0.6 inch wide, having a bal wheel and a hairspring.	No	143,894	1,662,029
		Adj	158,894	—
717.3137	Adj, ov 0.6 to 0.8 inch wide, having a bal wheel and a hairspring.	No	24,488	185,750
		Adj	29,488	—
717.3437	Adj, ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	46,394	486,036
		Adj	46,394	—

See footnote at end of table.

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY—Continued

See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics]

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
718.3337	Self-winding ov 0.9 to 1 inch wide, having a bal wheel and a hairspring.	No	2,000	22,490
718.3434	Having 14 jewels, self winding, ov 1-1.2 inch having a bal wh and a hairspring.	No	1,200	16,594
718.3437	Having 17 jewels, self winding, ov 1 to 1.2 inch wide, having a bal wh and a hairspring.	No	56,614	685,790
720.2400	Watch cases, of silver part precious metal or set etc	No	5,769	15,188
720.2800	Watch cases, n.s.p.f	No	9,627	29,846
720.2900	Watch bezels, backs and centers n.s.p.f	No	3,499	1,175
720.7505	Oth assemblies a subassemblies dutiable at 22.5 percent ad valorem.	(—)	—	2,261
72[illegible]9000	Watch parts n.s.p.f	(—)	—	3,135
740[illegible]020	Jewelry etc. and parts of precious metal	(—)	—	69,966
740.3800	Jewelry etc. and parts n.s.p.f. value ov $0.20 per dozen	(—)	—	779,790
766.2560	Antiques n.s.p.f	(—)	—	1,914
801.0000	Articles reimported under lease to foreign manufacturer	(—)	—	36,034
801.1000	Articles reimported, because do not conform to specifications.	(—)	—	17,503
806.2040	Value of repair or alteration art ex eng exported for same.	(—)	—	28,224
	All other articles [1]	(—)	—	21,775
	GUAM ISLAND			
	Total shipments	(—)	—	7,830,835
	U.S. merchandise returned	(—)	—	5,532,812
	Products of Guam Island	(—)	—	2,298,023
110.1020	Yellow fin, whole, fresh chld or froz but not othwse pres	Lb	68,946	26,414
110.1045	Skip Jack tuna, fresh, chilled o froz not othwse presv	Lb	460,340	169,770
110.1050	Tuna nes fresh, chilled or froz, but not othwse presv	Lb	86,200	35,342
380.8139	Men's or Boy's shirts of MM fibers, knit other	Doz	3,766	173,492
		Lb	19,443	—3
380.8445	Men's a boy's sport shirt man-made fiber not knit	Doz	105	4,46
		Lb	580	—
382.7853	Women's shirts, other	Doz	1,040	31,186
		Lb	4,550	—
607.1200	Iron a steel scrap content dutiable alloy	Ltn	3	1,721
612.1040	Brass waste and scrap	Clb	78,610	36,635
		Glb	107,871	—
612.1060	Copper waste a scrap alloyed nes	Clb	109,956	39,158
		Glb	114,437	—
618.1000	Aluminum waste a scrap	Lb	290,562	89,724
624.0400	Lead waste and scrap	Clb	34,798	11,845
	Watch movts assembled:			
	Having 17 jewels:			
716.3037	N/ov 0.6 inch wide, having a bal wheel and a hairspring.	No	3,300	12,215
716.3137	Ov 0.6 to 0.8 inch wide, having a bal wheel and a hairspring.	No	91,000	445,817
716.3337	Ov 0.9 to 1 inch wide, having a bal wheel and a hairspring.	No	1,200	5,988
716.3437	Ov 1 to 1.2 inch wide, having a bal wheel and a hairspring.	No	160,510	811,954
716.3537	Ov 1.2 to 1.5 inch wide, having a bal wheel and a hairspring.	No	4,600	22,485
716.3637	Ov 1.5 to 1.77 inch wide, having a bal wheel and a hairspring.	No	1,000	6,892
740.1020	Jewelry etc and parts, of precious metal	(—)	—	7,007
801.0000	Articles reimported, under lease to foreign manufactures	(—)	—	51,160
801.1000	Articles reimported, because do not conform to specifications	(—)	—	1,420
870.1000	Records, diagrams and other data on explopn etc o/s the U.S.	(—)	—	202,400
870.2700	Specimens of archeology etc imported for exhibition etc	(—)	—	103,230
	All other articles [1]	(—)	—	7,705
	AMERICAN SAMOA			
	Total shipments	(—)	—	106,504,737
	U.S. merchandise returned	(—)	—	792,261
	Products of American Samoa	(—)	—	105,712,476
110.1012	Alabcore, fresh, chilled or frozen but not otherwise pres	Lb	504,360	100,872
111.1500	Shark fins not otherwise prep, not in airtite contrs	Lb	315	1,997
112.3020	Tuna, white meat, no oil within quota in airtite cont n/ov 15 lb ea.	Lb	8,218,157	16,004,478

See footnote at end of table.

TABLE 4.—SHIPMENTS FROM U.S. POSSESSIONS TO THE UNITED STATES BY TSUSA COMMODITY—Continued

[See the explanation of statistics for information on coverage, sources of error in the data, and other definitions and features of the import statistics]

TSUSA No.	TSUSA commodity description	Unit of quantity	Net quantity	Value
112.3040	Tuna, except white, no oil in airtite cont s/ov 15 lb ea	Lb	19,071,270	24,075,287
112.3400	Tuna, meat not in oil in airtite cont ov 15 lb abv quota	Lb	5,668,738	9,340,182
112.9000	Tuna, prep or presvd, in oil in airtite containers	Lb	38,642,607	51,056,277
113.6040	Fish nes, prep or pres, n.s.p.f. no oil, in cntrs not ov 15 lb	Lb	103,488	31,434
136.0000	Dasheens, fresh, chilled, or frozen	Lb	107,795	37,903
184.5510	Canned fish and canned whale meat, not fit for human consump.	Lb	11,966,608	4,091,420
184.5530	Fish & whale meal & scrap unfit for human consump	Lb	2,005	171,809
222.4400	Bskts and bags of unspun veg materials, N.E.S	No	160	1,115
740.1020	Jewelry etc. and parts of precious metal	(—)	—	104,480
740.2000	Necklace, val n/ov 30 cents per doz, wholly of plastic shapes mounted on fib strings.	Doz	79,528	13,957
740.3800	Jewelry etc and parts n.s.p.f. valued ov $0.20 per doz	(—)	—	656,552
741.3000	Beads bugles and spangles n.e.s. not strung and not set	(—)	—	1,060
801.0000	Articles reimported under lease to foreign manufacturer	(—)	—	16,868
	All other articles [1]	(—)	—	6,785

— Represents zero.
[1] Commodities for which total shipments were valued less than $1,000.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 6687, a bill dealing with the tariff status of articles entering the United States from the insular possessions (Guam, American Samoa and the Virgin Islands).

Special provisions of United States trade legislation apply to the entry of articles into the United States from the insular possessions. General Headnote 3(a) of the Tariff Schedules of the United States provides such articles may be entered free of duty if they do not contain dutiable foreign materials in excess of 50 percent (or in the case of watches and watch movements 70 percent) otherwise they are subject to the applicable United States tariffs. The special provisions are intended to facilitate the economic development of the insular possessions.

We understand the primary purpose of the proposed legislation is to minimize the possibility of changes in the designations of eligible articles and beneficiary countries under the United States generalized system of preferences altering the tariff status of articles entering the United States from the insular possessions under General Headnote 3(a).

We consider measures, such as H.R. 6687, affecting domestic programs concerned with the economic expansion and diversification of the industrial development of the insular possessions of the United States of primary interest to the other executive agencies and accordingly defer to their views.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

FLORIDA CITRUS MUTUAL,
Lakeland, Fla., March 20, 1980.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, U.S. House of Representatives, Longworth House Office Building, Washington D.C.

DEAR MR. MARTIN: In response to Chairman Charles A. Vanik's Subcommittee on Trade of the Committee on Ways and Means March 17 hearing on certain tariff and trade bills, Florida Citrus Mutual, in lieu of personal appearance, wishes to file this statement of concern regarding H.R. 6687.

Florida Citrus Mutual represents 15,271 Florida citrus growers whose livelihoods depend on the economics, health and well-being of the state's number two industry, citrus.

Our primary concern with H.R. 6687 is that U.S. insular possessions could be used as duty-free entry conduits to the U.S. for other foreign imports, and we believe this would have an adverse economic impact upon the Florida citrus industry in particular.

In late 1963 and 1964, a device to import 90 percent Panamanian oranges into the Virgin Islands and commingle with 10 percent Virgin Islands citrus, and thence imported duty-free into the U.S. was created. This proposal was killed by the U.S. Government after the facts were made public.

The Florida citrus industry has no objections to fair and equitable competition, not subsidized by the federal or insular government, and not used as a vehicle to bring into the U.S. foreign produced products, in our case citrus, on a duty-free basis either through direct entry or commingling of foreign materials up to a 50 percent basis.

We appreciate this opportunity to respond to this bill.

Sincerely yours,

BOBBY F. MCKOWN,
Executive Vice President.

63-673 O - 80 - 55

H.R. 6975

To eliminate the duty on hardwood veneers.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 6975, if enacted, would provide duty-free treatment for imports of wood veneers, both of hardwood and softwood, from most-favored-nation (MFN) countries. This legislation would enable U.S. manufacturers of plywood who rely on imported logs and veneers for the manufacture of their product to obtain veneers at a lower cost and, thus, compete more effectively with imported plywood. Restrictions on the export of logs by major supplying countries have forced U.S. manufacturers to rely more heavily on imported veneers.

DESCRIPTION AND USES

The term "wood veneers" is defined in the Tariff Schedules of the United States (TSUS) as "Wood sheets or strips, regardless of thickness, quality or intended use, produced by the slicing or rotary cutting of logs or flitches; and wood sheets, not over ¼ inch in thickness, produced by sawing and of a type used to overlay inferior material".[1] The tariff provisions for wood veneers include veneers that have been reinforced or backed on one or both sides with paper, cloth, or other flexible material.

The wood veneers included in TSUS items 240.00, 240.02, and 240.03 are not reinforced or backed; however, they may be face finished[2] on one or both surfaces with wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints, or enamels.

The wood veneers included in items 240.04 and 240.06 are reinforced or backed with paper, cloth, or other flexible material. Item 240.04 includes decorative veneers not face finished or those face finished with a clear transparent material which does not obscure the grain, texture, or markings of the wood. Item 240.06 includes all other reinforced or backed veneers.

Hardwood veneers are derived from broad-leaved or deciduous trees, in contrast to softwood veneers which are derived from coniferous or evergreen trees.

Hardwood veneers, in demand most particularly for their decorative qualities, are made from many different species of domestic and imported hardwoods which offer a large variety of color and fancy or figured grain. Such veneers are made in various types, grades, and sizes. These range in size from strips smaller than letter size to sheets 4 feet by 8 feet, and in thickness from 1/100 to 5/16 inch. These veneers are broadly classified by the domestic producing industry as follows:

1. Special type—veneers made to meet certain definite requirements, such as those for aircraft veneers, marine veneers, and precision instruments.
2. Face type—fancy and figured veneers used in cabinet and furniture manufacture and the veneers used for faces on plywoods for wall paneling, doors, and furniture.
3. Commercial and utility type—all veneers manufactured for use in container and packaging type plywood, and the inner plies (cores and crossbands) and backs for other plywoods.
4. Container type—veneers especially produced for the fabrication of wirebound and nailed veneer boxes and other containers such as berry cups, tills, hampers, and baskets.

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[1] Headnote 1(a), pt. 3, schedule 2, TSUS.

[2] Headnote 2, pt. 3, schedule 2, provides—The term "face finished," as applied to the boards and panels provided for in this part, means that one or both surfaces of a panel or board have been treated with creosote or other wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints, or enamels, or have been overlaid with paper, fabric, plastics, base metal or other material.

5. Fat type—veneers produced for the manufacture of such articles as ice cream spoons and sticks, tongue depressors, matches, broom splints, and other woodenware products.

Softwood veneers are produced in the United States from a limited number of softwood species, largely from Douglas-fir, southern yellow pine, and certain other western softwoods. These veneers are normally utilized for their structural and utilitarian characteristics, rather than aesthetic qualities. These veneers are produced, chiefly by rotary cutting (peeling), in sizes up to about 4 feet by 8 feet and in thickness from 1/16 to 3/16 inch. Almost the entire domestic output of softwood veneers is consumed in the manufacture of softwood plywood. Conversion into softwood plywood is also the preponderant use of imported softwood veneers. The remainder of softwood veneer imports and production is consumed primarily in the manufacture of single-ply shipping containers (e.g., wirebound fruit and vegetable crates).

In this report, all data on quantities of wood veneer are expressed in terms of square feet, regardless of the many different thicknesses involved.

TARIFF TREATMENT

The column 1, LDDC, and column 2 rates of duty for wood veneers imported under TSUS items 240.00–240.06 are shown in table 1.

As a result of concessions granted in the recently concluded multilateral trade negotiations, the column 1 rates of duty on TSUS items 240.00–240.06 have been or are scheduled to be lowered as shown in table 2.

All wood veneers included in this legislation are eligible for Generalized System of Preferences (GSP) treatment. Imports under item 240.02 (Philippine mahogany veneers), if the product of the Philippine Republic, are currently ineligible for duty-free entry under the GSP based on Section 504(c)(1)(b) of Title V of the Trade Act of 1974.

STRUCTURE OF THE DOMESTIC INDUSTRY

There are about 600 plants in the United States producing wood veneers, and approximately 300 of these plants manufacture plywood from wood veneers. Hardwood veneers are produced in approximately 350 plants located primarily in the Southeastern United States. Softwood veneers are manufactured in about 250 plants located principally in the Western and Southern States. Oregon is by far the principal producing State.

The five largest producers of wood veneers, in order by estimated capacity are Georgia-Pacific Corp., Champion Building Products, Weyerhaeuser Co., Boise Cascade Corp., and Willamette Industries, Inc. Together these five companies account for approximately 40 percent of U.S. production of wood veneers. The veneer production of these five companies is mainly softwood, but Georgia-Pacific Corp., Champion Building Products, and Weyerhaeuser Co. have significant hardwood veneer production. Other important hardwood veneer producers are Russel Stadelman and Company, Nickey Bros., Inc., Columbia Plywood Corp., and Chester B. Stem, Inc. Many veneer manufacturers, particularly the larger manufacturers, produce a wide variety of other wood products including lumber and paper.

The softwood veneer industry is more heavily concentrated than the hardwood veneer industry. Softwood veneer is, for the most part, captive production heavily concentrated in large softwood plywood plants; and, as noted previously, the five major producers account for approximately 40 percent of all veneer production. When hardwood veneer is considered separately, concentration of production would fall significantly.

DOMESTIC PRODUCTION

Production data for wood veneers are on hand through 1978. Available statistics are known to underestimate production to the extent that captive veneer production (i.e., veneer produced in and consumed in plywood plants) is not generally enumerated. Estimates by the Commission staff indicate that total veneer production increased from 65 billion square feet in 1974 to 80 billion square feet in 1978. Hardwood veneer production fell slightly from 8 billion square feet in 1974 to 7 billion square feet in 1978. Production in 1979 of both total veneers and hardwood veneers is expected to be equal to, or slightly above, that for 1978.

A decline in housing starts in late 1979 (and if continued through 1980) is likely to result in reduced production in 1980. There have already been significant closings of softwood plywood plants thus far in 1980, which may well lead to lower softwood veneer production for the year.

Production, imports, exports, and apparent consumption for 1974–1978 are given in table 3.

U.S. IMPORTS

Import data for wood veneers are shown in table 4. Except for 1975 when imports fell to 1.5 billion square feet, they have remained fairly stable at approximately 2 billion square feet annually. Imports are comprised principally of hardwood veneers; 54 and 75 percent by quantity in 1978 and 1979, respectively (tables 4 and 5). Three TSUS items (240.00, 240.02, and 240.03) accounted for 99 percent of imports, by quantity, of wood veneers during each year from 1974–1979.

Canada and the Philippine Republic are the principal sources of U.S. imports, providing over 80 percent of all wood veneer imports in recent years. Canada provides significant quantities of hardwood veneers, and over 90 percent of softwood veneers. Imports from the Philippine Republic are almost entirely of hardwood veneers.

The principal U.S. importers include those companies already mentioned as significant producers, particularly Weyerhaeuser Company, Champion Building Products, and Russel Stadelman and Co. Imports of wood veneers enter most U.S. ports, but principally enter through ports on the Canadian border and along the Atlantic coast. Imported hardwood veneers are usually shipped to hardwood plywood producers in the Southeastern and Northeastern United States, while imported softwood veneers are believed to be shipped primarily to Western producers.

U.S. EXPORTS

U.S. exports of wood veneers were 1.4 billion square feet in 1978, or about 1.8 percent of estimated domestic production (table 6). Since 1974, U.S. exports have averaged about 1.2 percent of domestic production. West Germany and Canada are the largest importers of U.S. wood veneers with 36 and 15 percent, respectively, of total U.S. exports in 1979. No other country accounts for more than 10 percent of U.S. exports.

The principal U.S. exporters are believed to be the principal producers who were previously identified.

APPARENT U.S. CONSUMPTION

Apparent domestic consumption, shown in table 3, has increased from an estimated 65.5 billion square feet in 1975 to 80.6 billion square feet in 1978. Softwood veneers account for more than 90 percent of total veneer consumption. In recent years the ratio of imports to consumption for all wood veneers has been 2 percent. However, the ratio for softwood veneer imports has been consistently below 1 percent, while the ratio for hardwood veneers has been approximately 20 percent for the last few years. The ratio for hardwood veneers has been increasing slowly over the last 15 years.

POTENTIAL ANNUAL LOSS OF REVENUE

Based on data for U.S. imports of wood veneers in 1979 from non-GSP countries, the loss of revenue would have been approximately $5 million during that year, if this amendment to the TSUS had been in effect.

TECHNICAL COMMENT

The bill title states that the purpose of the legislation is "to eliminate the duty on hardwood veneers." However, as introduced, the proposed amendments to the TSUS would eliminate the duty on all wood veneers. More specific language will be necessary if softwood veneers, which are classifiable in TSUS

items 240.03–240.06, are not intended to be included within the scope of this legislation. Since most hardwood veneer is imported under TSUS items 240.00 and 240.03, and since these two items will become duty-free January 1, 1981 pursuant to MTN concessions (table 2), the legislation's stated purpose could be substantially accomplished by providing duty-free treatment solely for item 240.02.

The Committee may also wish to consider an amendment to this legislation to conform the rates of duty appearing in the LDDC column to the proposed column 1 (MFN) rates, for items 240.02 and 240.04, by deleting the LDDC rates. If this is not done, LDDC imports under these two items will continue to enter at present LDDC rates of duty rather than at the lower MFN rates,[3] a result which is clearly not in keeping with the legislative intent expressed in section 503(a)(2) of the Trade Agreements Act of 1979.[4] Moreover, such discriminatory treatment for LDDC wood veneer products would appear to violate our general MFN (Article I) obligations under the GATT.

TABLE 1.—WOOD VENEERS: U.S. RATES OF DUTY, BY TSUS ITEMS, 1980

Item	Article	Col. 1	LDDC	Col. 2
	Wood veneers, whether or not face finished, including wood veneers reinforced or backed with paper, cloth, or other flexible material:			
	Not reinforced or backed:			
240.00	Birch and maple	1% ad val.	Free.	20% ad val.
240.02	Philippine mahogany (almon (Shorea almon), bagtikan (Parashorea plicata), red lauan (Shorea negrosinsis), white lauan (Pentacme contorta and P. mindanensis), mayapis (Shorea squamata), tangile (Shorea polysperma) and tiaong (Shorea spp.)); meranti (Shorea spp.); red seraya (Shorea spp.); and white seraya (Parashorea spp.)	7% ad val.	4% ad val.	20% ad val.
240.03	Other	2% ad val.	Free.	20% ad val.
	Reinforced or backed:			
240.04	Decorative wood veneers, not face finished, or face finished with a clear or transparent material which does not obscure the grain, texture, or markings of the wood	5% ad val.	3.2% ad val.	33⅓% ad val.
240.06	Other	2% ad val.	Free.	20% ad val.

TABLE 2.—WOOD VENEERS STAGED RATE MODIFICATIONS EFFECTIVE AS TO ARTICLES ENTERED OR WITHDRAWN FROM WAREHOUSE FOR CONSUMPTION ON AND AFTER JAN. 1, 1980

Item	Rates from which staged	Rates of duty (percent), effective with respect to articles entered on and after Jan. 1—							
		1980	1981	1982	1983	1984	1985	1986	1987
240.00	4 percent ad val	1	Free	Free	Free	Free	Free	Free	Free
240.02	10 percent	7	4.0	4.0	4.0	4.0	4.0	4.0	4.0
240.03	5 percent	2	Free	Free	Free	Free	Free	Free	Free
240.04	8 percent	5	3.2	3.2	3.2	3.2	3.2	3.2	3.2
240.06	5 percent	5	Free	Free	Free	Free	Free	Free	Free

Source: Federal Register, Thursday, Dec. 13, 1979.

[3] General Headnote 3(d)(ii), TSUS, provides—"Imported articles, the products of least developed developing countries as designated in paragraph (i) above, provided for under the TSUS items for which rates of duty appear in the column entitled "LDDC" of the schedules, *are subject to those rates of duty rather than the rates of duty provided for in column numbered 1*, except that articles subject to temporary modifications under any provisions of the Appendix to these schedules shall be subject to the rates of duty set forth therein. If no rate of duty is provided in the "LDDC" column for a particular item, the rate of duty provided in column numbered 1 shall apply." [Emphasis supplied.]

[4] S. Rept. No. 96-249, 96th Congress, 1st session 168-9 (1979).

TABLE 3.—WOOD VENEERS: U.S. PRODUCTION, IMPORTS, EXPORTS, AND APPARENT CONSUMPTION, 1974–78

[In millions of square feet]

Year	Production[1]	Imports	Exports	Apparent consumption[1]	Ratio of imports to consumption (percent)
1974	64,900	2,282	599	66,583	3
1975	64,700	1,498	738	65,460	2
1976	73,400	1,993	1,210	74,183	2
1977	77,600	2,255	687	79,168	2
1978	79,900	2,148	[1] 1,426	80,622	2

[1] Estimated by the staff of the USITC.

Source: Official statistics of the U.S. Department of Commerce, except as noted.

TABLE 4.—WOOD VENEERS: U.S. IMPORTS FOR CONSUMPTION, BY PRINCIPAL SOURCES, 1974–79

Source	1974	1975	1976	1977	1978	1979
Quantity (million square feet):						
Canada	1,004	918	1,185	1,331	1,312	1,332
Philippine Republic	663	294	454	569	443	448
Brazil	159	102	171	112	139	76
France	11	11	11	10	15	19
Peru	32	7	30	37	54	44
Thailand	9	2	6	3	6	8
United Kingdom	3	2	3	4	5	6
Federal Republic of Germany	7	6	9	(1)	10	9
All other	392	155	126	189	160	133
Total	2,282	1,498	1,993	2,255	2,143	2,077
Value (thousands of dollars):						
Canada	39,522	32,300	43,751	51,736	61,798	74,318
Philippine Republic	19,814	5,934	11,596	17,246	14,470	21,171
Brazil	3,512	3,086	5,667	4,853	6,555	3,478
France	1,202	1,155	1,450	1,582	2,292	2,660
Peru	1,098	653	1,182	1,503	2,293	2,587
Thailand	450	282	915	687	1,149	1,424
United Kingdom	578	497	655	758	939	1,369
Federal Republic of Germany	1,322	1,018	1,190	(1)	1,363	1,355
All other	11,955	6,254	6,941	12,799	9,904	9,596
Total	79,454	51,187	73,347	91,163	100,763	117,958

[1] Less than 500.

Source: Compiled from official statistics of the U.S. Department of Commerce.

TABLE 5.—HARDWOOD VENEERS: U.S. IMPORTS FOR CONSUMPTION, BY PRINCIPAL SOURCES, 1978 AND 1979

Source	1978	1979
Quantity (million square feet):		
Canada	817	834
Philippine Republic	443	448
Peru	44	58
Brazil	136	76
France	13	19
Thailand	6	8
Federal Republic of Germany	10	9
United Kingdom	5	6
All other	158	101
Total	1,632	1,560
Value (thousands of dollars):		
Canada	46,390	56,570
Philippine Republic	14,428	21,162
Peru	1,912	4,917
Brazil	6,401	3,478
France	2,226	2,660
Thailand	1,120	1,424
Federal Republic of Germany	1,327	1,349
United Kingdom	930	1,315
All other	9,635	6,292
Total	84,409	99,166

Source: Compiled from official statistics of the U.S. Department of Commerce.

TABLE 6.—WOOD VENEERS: U.S. EXPORTS, BY PRINCIPAL MARKETS, 1974-79

Market	1974	1975	1976	1977	1978	1979
Quantity (million square feet):						
Federal Republic of Germany	177	202	683	280	[1] 350	462
Canada	312	403	323	199	243	192
Switzerland	20	43	56	38	69	71
Italy	4	5	13	17	42	66
United Kingdom	15	10	19	25	36	49
All other	71	76	116	128	[1] 685	434
Total	599	738	1,210	687	[1] 1,426	1,275
Value (thousands of dollars):						
Federal Republic of Germany	12,149	14,780	16,706	21,192	35,907	44,398
Canada	17,801	19,014	14,554	10,175	13,206	12,696
Switzerland	1,282	2,983	3,731	2,701	5,646	7,133
Italy	148	114	890	1,340	3,360	3,566
United Kingdom	1,056	734	1,437	2,067	3,009	4,126
All other	4,589	10,584	8,396	9,268	13,190	16,518
Total	37,025	42,243	45,715	46,742	74,318	91,436

[1] Estimated by the staff of the USITC.

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted.

Note. Totals may not add due to rounding.

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in response to your request for the views and recommendations of this Office on H.R. 6975, a bill to eliminate the duty on hardwood veneers.

The Office of the United States Trade Representative supports the enactment of H.R. 6975. We believe that the smultaneous elimination of duties on wood veneers would be beneficial to the wood products industry as a whole.

The elimination of the duties on wood veneers was recommended by our private sector industry advisors during the Multilateral Trade Negotiations (MTN). We were able to negotiate the elimination of duties on three of the items subject to this proposed legislation during the MTN (TSUS 240.00, 240.03 and 240.06), but the President lacked the authority under the Trade Act of 1974, to eliminate completely the duties on the other two items (TSUS 240.02 and 240.04). On these two items, a maximum 60 percent reduction was negotiated. H.R. 6975, if enacted, would provide for the immediate elimination of duties on all five of these wood veneer items.

As a matter of policy, this Office prefers that reductions of tariffs be accomplished through international trade negotiations in which the President has the opportunity to obtain reciprocal benefits for U.S. exporters. In this case, however, we believe that the economic benefits of duty-free entry of wood veneers to U.S. producers and consumers warrant the unilateral elimination of these duties.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 6975, a bill to eliminate the duty on hardwood veneers.

If enacted, H.R. 6975 would amend the Tariff Schedules of the United States (TSUS) to eliminate the column-1 duties, which are accorded imports from countries receiving most-favored-nation tariff treatment, imposed on wood veneers. Imports of wood veneers presently enter under TSUS items 240.00, 240.022, 240.03, 240.04, and 240.06 and are subject to column-1 duties of 1 percent, 7 percent, 2 percent, 5 percent and 2 percent ad valorem, respectively.

The Department of Commerce favors the enactment of H.R. 6975.

The simultaneous elimination of duties on wood veneers would have a positive effect on the wood products industry as a whole since most of the veneers in question are no longer competitive with domestically produced items. Any negative effect on the industry would be minimal. At the same time, H.R. 6975 would have a favorable impact on the large number of producers who depend upon

imported veneers. In fact, the producers who might be adversely affected as a result of the duty eliminations on the categories competitive with domestic production are also importers who will benefit from the bill.

During the course of the Multilateral Trade Negotiations (MTN), and as part of the Industry Consultations Program, Industry Sector Advisory Committee (ISAC) #3, acting on behalf of the lumber and wood products industry, sought duty-free entry for all wood veneers. Upon analysis, it was mutually agreed between the Executive Branch and the industry that such a goal would be in the U.S. economic interest.

Accordingly, duty-free treatment for items 240.00, 240.03, and 240.06 was negotiated. While maximum tariff reductions were negotiated for items 240.02 and 240.04, it was not possible to eliminate the duties on those items because the President had authority to eliminate duties only on items dutiable at 5 percent or less. (Items 240.02 and 240.04 were dutiable at 10 percent and 8 percent, respectively.) The enactment of H.R. 6975 would resolve this inconsistent treatment accorded wood veneer products by providing duty-free entry for all items in question and, thereby, would realize an important industry objective of reducing costs on essential imports used in the manufacture of plywood.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Conrgess from the standpoint of the Administration's program.

DEPARTMENT OF THE TREASURY

This replies to your request for the views of the Department of the Treasury on H.R. 6975, to eliminate the Duty on hardwood veneers.

The purpose of the bill is to amend items 240.00, 240.02, 240.03, 240.04 and 240.06 of the Tariff Schedules of the United States by repealing the column 1 duties on hardwood veneers. Currently, the column 1 duties for products imported under these items are 1 percent ad val., 7 percent ad val., 2 pecent ad val., 5 percent ad val., and 2 percent ad val.,respectively.

The Department of the Treasury has no objection to the enactment of the bill.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

DEPARTMENT OF LABOR

This is to respond to your request for the views of the Department of Labor on H.R. 6975, a bill to eliminate the duty on hardwood veneers.

The Department of Labor does not object to the enactment of this bill.

Lower duties on hardwood veneers may result in more employment in the labor-intensive wood product industries such as furniture. Moreover, it is unlikely that enactment of this bill would have a negative impact on a domestic industry because hardwood veneers are used chiefly in the manufacture of plywood and most plywood manufacturers use imported veneers.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

HARDWOOD PLYWOOD MANUFACTURERS ASSOCIATION,
Reston, Va., April 14, 1980.

Mr. JOHN M. MARTIN,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR CHIEF COUNSEL MARTIN: My name is L. R. Haan. I am President of Plywood Panels, Inc. P.O. Box 15435, New Orleans, La. 70175. Phone (504) 899-5691. Additionally, I am Chairman of the Legislative Committee of the Hardwood Plywood Manufacturers Association, P.O. Box 2789, 1825 Michael Faraday Drive, Reston, Virginia 22090. Phone (703) 435-2900.

The Hardwood Plywood Manufacturers Association is a national trade association of manufacturers and prefinishers of hardwood plywood. I am enclosing a membership list [omitted]. We have 74 member plants and 95 supplier members.

We are submitting this written statement in lieu of a personal appearance expressing unreserved support of H.R. 6975 (Mr. H. E. Ford of Tennessee), to eliminate the duty on hardwood veneers.

HPMA has supported such action since 1974. At that time we found individual tariff reductions would not be considered by government because of the ongoing Multilateral Trade Negotiations.

I was a member of ISAC No. 3, Lumber and Wood Products, for the Multilateral Trade Negotiations, and that committee went on record favoring elimination of the duty on hardwood veneers.

In 1978, Mr. Martin, U.S. domestic hardwood plywood manufacturers produced 1,480,571,000 square feet, surface measure, of hardwood plywood. In that same year, 4,563,368,000 square feet, surface measure, of hardwood plywood was imported primarily from Asian countries for consumption in the U.S. All U.S. interests, without exception, would be benefited by the elimination of duty on veneers and access to the lowest cost veneers to make hardwood plywood in this country.

We solicit of your committee unanimous support of H.R. 6975.

Sincerely,

L. R. HAAN,
Chairman, Legislative Committee.

Enclosure.

HARDWOOD PLYWOOD MANUFACTURERS ASSOCIATION,
Reston, Va., April 21, 1980.

Congressman CHARLES A. VANIK,
Chairman, House Ways and Means Committee, Subcommittee on Trade, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN VANIK: I am writing you to support H.R. 6975—A bill to eliminate the duty on hardwood veneers.

I am the Managing Director and Secretary/Treasurer of the Hardwood Plywood Manufacturers Association, a position I have held since 1958. I have been closely connected with the wood industry, either in industry or in wood trade associations since 1949. I was a technical advisor to Ambassadors Herter and Roth during the Kennedy Round of Tariff Negotiations and was Chairman of ISAC # 3 during the recent Japanese Round of Trade Negotiations.

The Hardwood Plywood Manufacturers Association is the national trade association of manufacturers and prefinishers of hardwood plywood. We have 67 members located in 22 states who manufacture hardwood veneers.

Industry Sector Advisory Committee #3—For Lumber and Wood Products went on record (during the recent multilateral trade negotiations) urging the elimination of the duty on hardwood veneers. Since it was not then legally possible, the U.S. Department of Commerce agreed they would prepare a bill after the negotiations were over to eliminate the duty on hardwood veneers. The duty elimination will benefit the domestic hardwood plywood industry which is dependent, for a large portion of its veneer, on foreign sources.

For the last 21 years, the domestic hardwood plywood industry has manufactured from one billion to two billion square feet, surface measure, of hardwood plywood annually. In that same period of time, imports of hardwood plywood have increased from less than 30 percent of the total U.S. consumption of hardwood plywood to over 75 percent of the consumption. The majority of the plywood imports have been from Asian countries with low labor rates and which have been able to undersell the American producers of hardwood plywood.

In order to keep the 166 domestic hardwood plywood manufacturers as competitive as possible with the Asian producers of hardwood plywood, the U.S. hardwood plywood manufacturers need the imported Asian veneers for faces, cores and backs used in manufacturing hardwood plywood.

The Hardwood Plywood Manufacturers Association supports the passage of H.R. 6975 and will greatly appreciate your Committee's assistance.

Sincerely,

CLARK E. MCDONALD,
Managing Director.

PAT BROWN LUMBER CORP.,
Lexington, N.C., April 14, 1980.

Congressman CHARLES A. VANIK,
Chairman, House Ways and Means Committee, Subcommittee on Trade, Longworth House Office Building, Washington, D.C.

GENTLEMEN: This letter is to advise you of our support of H.R. 6975 to eliminate the duty on hardwood veneers.

Our company is an active member of the Imported Hardwood Products Association with the executive offices located in Alexandria, Virginia. We have been active in the imported hardwood business for thirty years.

There is an ever increasing shortage of high quality domestic hardwood timber to meet the requirements of veneer manufacturers throughout the United States. Also, because the quality of the second and third growth timber is inferior to the original stands, it is necessary to cut an ever increasing numerical number of logs in order to obtain the same identical amount of defect free veneer. This puts a further strain on the domestic hardwood timber supply.

Naturally, this creates a larger demand for the quality domestic trees available which, in turn, increases the asking price from the timber owner, the end result being more inflationary factors being put into the economic picture.

Also, about ninety-eight percent of the imported hardwood veneer is produced in developing countries and the elimination of this duty would encourage our veneer buyers to place larger volumes of business with firms in these developing countries, which, in turn, would benefit all concerned.

We strongly urge your recommending that this bill be voted into law.

Yours very truly,

F. H. WALL, Jr.,
President.

PLYWOOD PANELS, INC.,
New Orleans, La., April 14, 1980.

Hon. CHARLES A. VANIK,
Chairman, House Ways and Means Committee, Subcommittee on Trade, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN VANIK: Plywood Panels Inc. is a medium sized, independent processor of plywood. We employ about 200 people. Among the many industries benefiting from our existence, we are a substantial customer to the ocean freighting industry. Last year we imported about 60,000 tons of cargo through seven ports—Vancouver, Washington, Los Angeles, California, Galveston, Texas, New Orleans, Louisiana, Charleston, South Carolina, Norfolk, Virginia, and Camden, New Jersey.

In 1979, we shipped with independent truckers nearly 5,000 truckloads of product for one of our two manufacturing locations (New Orleans, La. and Norfolk, Va.) to points in all states east of the Rocky Mountains.

We have for many years been actively involved in trade activities such as the MTN, Customs Modernization, and Customs Valuation. We have had active company representation on ISAC #3 for most of its existence.

Mr. Vanik, the purpose of this letter is to express our unequivocal support of H.R. 6975—the veneer bill to eliminate the duty on hardwood veneer.

We believe you have knowledge of all the reasons why the duty on hardwood veneer should be eliminated. We are also quite confident that you will have encountered no opposition to this proposal. Elimination is supported by Government, ISAC #3, the Imported Hardwood Products Association, the Hardwood Plywood Manufacturers Association, the National Forest Products Association, and the constituents these groups represent.

Mr. Vanik, we sincerely appreciate the efforts of you and Congressman Ford of Tennessee to get this matter before your committee.

Sir, we respectfully solicit your full support to see H.R. 6975 is favorably enacted. We would be pleased to be of any assistance you require to this end.

Sincerely,

L. R. HAAN,
President.

TRANSPACIFIC WOOD, INC.,
Burlingame, Calif., April 14, 1980.

Congressman CHARLES VANIK,
Chairman, House Ways and Means Committee, Subcommittee on Trade, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN VANIK: This letter is in reference to H.R. 6975 to eliminate duty on hardwood veneers. Our Company is solely dependent on the importation of forest products from various producing countries and the sales of these products in the United States.

Our domestic buyers are extremely concerned with the growing shortage of quality hardwoods in the United States. The imports from other countries are necessary to meet these shortages in order to supply the needs of United States industries such as, the furniture, kitchen cabinets and the domestic plywood manufacturers. These industries would definitely incur curtailments in their production and reduced employment if foreign hardwood veneers were not available.

At a time when everyone is concerned with inflation at all levels, the elimination of duties on hardwood veneers should reflect positively in the efforts to keep consumer cost down in the forest products industry. The United States hardwood-plywood manufacturers rely heavily on imported veneer components for core and back veneer in the manufacturing of plywood with a domestic hardwood face.

The duties on hardwood veneers would have been removed during the recent trade negotiations had it been legally possible. We are active members in the Imported Hardwood Products Association, and we strongly support the passing H.R. 6975.

Very truly yours,

JOHN P. BENNETT,
Vice President.

H.R. 7004

To permit until July 1, 1982, the duty-free entry of Tricot and Raschel warp knitting machines.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 7004, if enacted, would amend the Appendix to the Tariff Schedules of the United States (TSUS) to provide for duty-free entry of tricot and Raschel warp knitting machines from MFN countries commencing, with the date of enactment through June 30, 1982.

DESCRIPTION AND USES

Warp knitting machines are machines which generally produce flat or open width fabrics by feeding numerous ends of yarn from warps or beams to a series of needles, each end of the warp yarn being fed to an individual needle.

A warp knit fabric tends to be less mobile or resilient than a weft knit fabric. Whereas a weft knit fabric will possess both lengthwise and widthwise resilience, a warp knit fabric embodies this stretch property in only one direction; i.e., widthwise resilience.

Warp knitting machines comprise several different categories. The two most common machines are tricot and Raschel machines.[1] Simplex, Milanese, and Kettenraschel are other types of warp knitting machines.

Tricot warp knitting machines are generally equipped with a single bed of spring needles. The recent development, however, of tricot warp knitting machines fitted with latch needles and with so-called compound needles has led to an abandonment of definitions based on the type of needle.

A tricot fabric can be plain, patterned, or striped. Generally tricot fabrics are much lighter in weight than Raschel fabrics. But tricot fabrics can also be made to resemble Raschel fabrics. The most common kind of tricot fabric is two-bar tricot which includes tricot jersey—the most widely used material for lingerie and other intimate apparel, printed outerwear, and backing bonded knits. Other than jersey, two-bar tricot also comes in satin, sharkskin, tulle and angel lace constructions among the more important tricot fabrics. The genre also comprises a wide range of striped and patterned fabrics.

Raschel knitting machines are equipped with either one or two needle beds. They are usually fitted with latch needles but are sometimes fitted with compound needles.

Unlike tricot, Raschel fabric runs the gamut from netting, lace, and curtain fabrics to heavy, ponderous plush and pile coating and carpet fabrics. Among the most popular types of Raschel fabric are: (1) Power-net or elastic fabric for foundation garments and swimsuits; (2) thermal cloth, a specially constructed double knit fabric for underwear: (3) lace which may compare in weight and complexity to lace produced on Levers lace machines; (4) netting which can range in structure, weight, and strength from flimsy hair nettings to the most robust deep sea fishing or camouflage nettings. Raschel is an especially suitable fabric for women's outerwear applications and men's knit shirts. More recently it has been introduced in patterns and weights suitable for men's tailored clothing, such as slacks, sport jackets, and even suits. Raschel also plays a small role in women's hosiery in the form of fancy patterned net stockings and plain and patterned pantyhose.

Because of the constantly evolving technology with respect to warp knitting machines, we do not believe that a clear line of demarcation can be drawn between tricot and Raschel knitting machines and other warp knitting machines, or even between the fabrics produced by such machines.

[1] Raschel machines include Raschel crotchet machines.

TARIFF TREATMENT

Tricot and Raschel warp knitting machines are provided for, together with all other warp knitting machines, in TSUS item 670.20. This provision covers knitting machines other than circular knitting machines, except full-fashioned hosiery machines and V-bed flat knitting machines. Item 670.20 includes, in addition to warp knitting machines, other non-circular knitting machines; e.g., full-fashioned outerwear knitting machines, flat links-and-links knitting machines, and low-cost manual knitting machines. The column 1 (MFN) rate of duty for item 670.20 is 6.7 percent ad valorem;[2] the column 2 rate of duty is 40 percent ad valorem. The LDDC[3] concession rate of duty is 4.7 percent ad valorem.

Articles covered by item 670.20 are listed as eligible under the Generalized System of Preferences (GSP), and are thus permitted duty-free entry into the United States when imported from designated beneficiary developing countries. During 1979, imports valued at $15,428 were entered under item 670.20 from such beneficiary developing countries. However most, if not all, of such imports probably were not warp knitting machines.

STRUCTURE OF THE DOMESTIC INDUSTRY

One firm with about 10 employees builds Raschel crochet machines (a minor type of Raschel knitting machine) in the United States. This firm (Cidega Machine Corp.) is owned by Joan Fabrics Corp., Lowell, Mass. Two other firms, which are machine shops with a diversified product line, formerly made a few small laboratory models for knitting sample tricot fabrics. For the last few years, each of these firms has made only an occasional knitting machine and each regards itself as essentially out of the business. These firms are: Gibbs Machine Co., Inc., Greensboro, N.C., with about 50 employees; and Bearing Products Co., Philadelphia, Pa., with about 25 employees. Two large U.S. firms (Rockwell International, Reading, Pa., and Barber-Colman Co., Rockford, Ill.) built significant numbers of tricot and Raschel machines until 1975. However in 1975, these two firms withdrew from the business and have not produced any such machines since then. There is no other known production of warp knitting machines in the United States.

DOMESTIC PRODUCTION

The value of the production of tricot and Raschel warp knitting machines in the United States is not published. Production during 1972–74 amounted to less than $5 million. Subsequently, it fell very sharply with the withdrawal of Rockwell International and Barber-Colman from the industry in 1975. During 1976–79, annual production value has been far below $1 million.

U.S. IMPORTS AND APPARENT DOMESTIC CONSUMPTION

Imports under TSUS item 670.20, well over half of which are believed to have been tricot and Raschel warp knitting machines, were as follows during 1972–79:

Year:	*Entered value*[1] *(in thousands)*
1972	$15,635
1973	6,603
1974	6,526
1975	4,627
1976	9,321
1977	8,162
1978	17,845
1979	15,938

[1] We estimate that approximately 60 percent of the entered value of all machinery entered under item 670.20 consists of the type of warp knitting machines discussed in this report.

West Germany is the world's largest producer of warp knitting machines; trade sources estimate that one West German firm, Karl Mayer, accounts for 75 percent of world sales of this product. West Germany's share of total U.S.

[2] The MFN rate of duty was reduced from 7 percent ad valorem, in the Multilateral Trade Negotiations, to the current rate. This rate will decrease, in eight equal stages, to 4.7 percent ad valorem effective Jan. 1, 1987.

[3] Least Developed Developing Countries (General Headnote 3(d)).

imports under item 670.20 ranged from 53 to 89 percent during 1972–79. Much smaller amounts were imported under item 670.20 from Italy, Switzerland, and Spain. East Germany also produces such machines. In 1979, imports from East Germany under item 670.20 were valued at $318,103. Most, if not all, of the East German imports are believed to represent warp knitting machines of the type covered by this legislation.

During 1972–73, more than half of domestic consumption was provided by imports. From mid-1975 to the present, the only machines known to have been made in the United States were the Raschel crochet machines made by the small Cidega firm.

Duty-free entry of Raschel crochet machines competitive with those made by Cidega Machine Corp. would be permitted under this amendment to the TSUS. Such machines are imported from Italy, Switzerland, and Spain and, although imports from these countries are not large by comparison with imports of warp knitting machines from West Germany, they are significant in the narrower field in which Cidega operates. We understand, however, that Joan Fabrics Corp. (the owner of Cidega Machine Corp.) takes the position that they would enjoy a net gain from the reduction of the duty rate to zero. This is premised on a consideration of the large volume of warp knitting machinery which Joan Fabrics purchases from foreign sources compared with a much smaller sales volume from Cidega.

POTENTIAL LOSS OF REVENUE

The potential loss of revenue, on an annualized basis, resulting from enactment of this legislation is estimated at $625,000 at 1980 tariff rates. This estimate is based on the assumption that the level of imports of tricot and Raschel warp knitting machines[4] from MFN countries in 1979 will remain the same during 1980–83. Based on this assumption, and on the declining rate of duty, the estimated revenue losses for 1981, 1982, and 1983 are $597,000, $569,000, and $551,000, respectively.

TECHNICAL COMMENTS

We believe that the Customs Service may encounter great difficulty in distinguishing tricot and Raschel knitting machines from other warp knitting machines. We also believe that t here are no other types of warp knitting machines produced in the United States. Accordingly, we suggest that the coverage of this legislation be broadened to include all warp knitting machines and that section 1 be amended to read as follows:

". . . is amended by inserting, in numerical sequence, the following new item:

912.09	Warp knitting machines (provided for in item 670.20, part 4E, schedule 6).....	Free.	No change.	On or before 6/30/82."

The suggested language incorporates other minor changes intended to conform the proposed amendment with the current format of the TSUS.

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in response to your request for the views and recommendations of this Office on H.R. 7004, a bill to permit until July 1, 1982, the duty-free entry of Tricot and Raschel warp knitting machines.

The Office of the United States Trade Representative does not object to the enactment of H.R. 7004. It is our understanding that there is no domestic production of these knitting machines and that the suspension of the applicable duties could enhance the competitiveness of those textile mills which utilize tricot and raschel warp knitting machines.

As a matter of policy, this Office prefers that reductions of tariffs be accomplished through international trade negotiations in which the President has the opportunity to obtain reciprocal benefits for U.S. exporters. In this case, however, we believe that the economic benefits of duty-free entry of tricot and raschel warp knitting machines to U.S. producers and consumers warrant the unilateral suspension of these duties.

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[4] We estimate the dutiable value (i.e., entered value minus duty-free merchandise) of imports of such machines to be approximately 60 percent of the total dutiable value of all entries under TSUS item 670.20.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 7004, a bill, to permit until July 1, 1982, the duty-free entry of Tricot and Raschel warp knitting machines.

If enacted, H.R. 7004 would amend the Tariff Schedules of the United States (TSUS) to provide duty-free entry until July 1982, for Tricot and Raschel warp knitting machines from countries afforded column-1, most-favored-nation (MFN) tariff treatment. The column-2 duty would not be changed. The knitting machines presently are classified under TSUS item 670.20 and are subject to a column-1 duty rate of 6.7 percent ad valorem. The column-2 rate is 40 percent ad valorem.

The Department of Commerce supports the enactment of H.R. 7004.

U.S. production of Tricot and Raschel warp knitting machines is negligible. Since 1976, annual domestic production has been valued at less than $1 million. Duty-free importation of this machinery would not adversely affect American textile machinery producers.

At the same time, a duty suspension on Tricot and Raschel warp knitting machines would benefit U.S. textile manufacturers who are dependent upon imports of those products. A suspension of the import duties would permit U.S. textile producers to purchase necessary equipment at lower costs. Such a cost savings could aid in making certain U.S. textile products more competitive in domestic and foreign markets.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF STATE

The Secretary has asked me to reply to your request for the views of the Department of State on H.R. 7004, a bill providing duty free entry for Tricot and Raschel warp knitting machines.

The Department of State has no objection to the enactment of the proposed legislation. We understand there is no United States production of the knitting machines of interest. The domestic textile industry therefore relies on imports to meet its requirements for such equipment.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF LABOR

This is in response to your request for the views of the Department of Labor on H.R. 7004, a bill to permit until July 1, 1982, the duty-free entry of Tricot and Raschel warp knitting machines.

The Department of Labor supports enactment of this bill. There is presently no domestic production of the machines described in H.R. 7004 and removal of the duty would benefit the domestic textile industry.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

CHARBERT FABRICA CORP.,
New York, N.Y., April 11, 1980.

Hon. CHARLES A. VANIK,
Chairman for Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR SIR: I am aware that there will be a hearing on April 17, 1980 in regard to HR 7004 which is a bill to permit the duty free entry of tricot and raschel warp knitting machines. Please consider this statement for the hearing record in lieu of my personal appearance.

Charbert Fabrics Corporation of 90 Park Avenue, New York, N.Y. 10016, supports this bill totally as it is pointless to have a traiff on those machines due to the fact that no one in this country manufactures them at all and we are forced to buy these machines which are a necessary piece of equipment for our product. Should the duty be eliminated, we would be in a better position to buy more machinery due to the duty savings and in turn increase employment in our manufacturing facility. It would also, make our fabric more competitive and help our sales for the domestic and overseas market.

Charbert Fabrics Corporation wishes to go on record as totally supporting bill H.R. 7004.

With best personal regard.

Very truly yours,

STANLEY B. AMSTERDAM,
Vice President.

DAN RIVER, INC.,
WARP KNIT DIVISION,
New York, N.Y., April 16, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Longworth Office Building, Washington, D.C.

DEAR MR. VANIK: Although I can not appear at the hearing scheduled for April 17th to consider HR 7004, a bill to permit the duty free entry of trade of Rachel and tricot warp knitting machines, please accept this letter as part of the hearing record.

As Executive Vice President of the Dan River Warp Knit Division we are in favor of that bill because it is pointless to have a tariff on a piece of capital equipment that is not produced in the United States.

We need to purchase these machines at the World Market price in order to complete in the world fabric market and thereby to increase our exports and employment capability.

Sincerely,

FRANCIS P. GEHRING,
Executive Vice President.

PENN ELASTIC CO.,
West Point, Pa., April 16, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR CHAIRMAN VANIK: Penn Elastic Company is vitally concerned that Bill H.R. 7004 be enacted. It is not possible for a company representative to appear at the Hearings being held April 17, 1980 by the Subcommittee on Trade. We therefore request that this letter be included in the records of this Hearing in lieu of a personal appearance.

Penn Elastic Company is a producer of tricot and raschel warp knitted fabric, located in West Point, Pennsylvania, and fully supports H.R. 7004 to permit the duty-free entry of Tricot and Raschel warp knitting machines into the United States, to eliminate the competitive disadvantage that our industry has endured, vis a vis our foreign counterparts. We respectfully submit an extension for a five year period would provide our manufacturers an opportunity to secure the needed equipment in a more realistic time frame. The warp knit manufacturers in the United States must import all warp knitting machinery as there are no domestic manufacturers of this equipment. The duty rate of 6.7 percent ad valorem on each machine imported is for the purpose of protecting a domestic industry which has ceased to exist and there is no liklihood of U.S. machinery manufacturers re-entering this field due to the great technological advances made by the foreign producers.

It is our firm belief that U.S. manufacturers of this type of material should not be penalized and placed at a competitive disadvantage by our own Government with a tariff on equipment that is no longer produced in this country, and this inequity was recognized during the recent multilateral trade negotiations.

We strongly urge the immediate adoption of this badly needed legislation.

Very truly yours,

ALFRED J. LAZARSKI,
Executive Vice President.

STATEMENT OF HON. RICHARD T. SCHULZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

H.R. 7004, a bill which I have introduced, will suspend for two years the column one rate of duty on imports of tricot and raschel warp knitting machines.

Mr. Chairman, it is a well known fact that our domestic textile and apparel industries are too often placed at a competitive disadvantage to their foreign counterparts. It is a rare occasion, however, that this committee and the Congress has an opportunity to address this unfortunate situation. The passage of this legislation, offers such an opportunity in pursuit of that goal.

Here is the situation now faced by a large number of domestic warp knit manufacturers. In order to remain competitive in domestic and world markets, these companies must acquire a new generation of warp knitting machinery which can only be purchased outside of this country. This is the case because there has been no domestic production of warp knit machinery since 1975. Yet, these companies must pay a current U.S. duty rate of 6.7 percent ad valorem on each machine they purchase from an FMN country. The burden of this duty is substantial considering that the highly sophisticated warp knit machinery, produced principally in West Germany, costs between $35,000 and $50,000 per unit.

Surely there can be no rationale for protecting a domestic industry with a tariff when no domestic production exists. Furthermore, it is clear that this latest generation of machinery is so far advanced that there is little liklihood of any U.S. machinery manufacturers reentering the field.

U.S. manufacturers of warp knit fabrics, which are located throughout the Northeast and in the South, are among the most experienced and innovative in the world. They have concentrated on warp knitting and special finishing proceses for fabrics which are used extensively in apparel, home furnishings, sporting goods and health care items. These companies produce for a highly competitive international market and must depend upon imaginative design and technical innovation in fabrication. The new generation of warp knit machinery incorporates some of the most significant technological innovations evidenced by warp knitting companies in many years. These new machines, for example, operate at double the speed of their predecessors and have greatly improved maintenance and repair performance.

I do not believe that U.S. firms should be penalized and placed at a competitive disadvantage by their own Government which imposes a tariff on equipment which is not manufactured domestically. This tariff inequity on warp knit machinery was, in fact, recognized during the recently concluded multilateral trade negotiations when it was decided to reduce the 7 percent tariff on these machines to 4.7 percent by 1987. While this was a small step in the right direction, it will do little to alleviate the immediate problem.

Suspending the U.S. column one rate duty for a period of two years would have several beneficial effects. This action would permit domestic textile firms to purchase the needed new machinery at a lower cost, thus assisting in making U.S. textile and apparel products more competitive in both domestic and foreign markets. In addition, removal of this tariff burden would be particularly beneficial to American consumers who ultimately pay for such tariffs in the form of higher prices for knitted textile and apparel products.

Finally, a more competitive U.S. made product means that a warp knit company will be better able to increase its sales in both domestic and foreign markets. This will clearly have a beneficial effect upon domestic employment and upon our international balance of trade.

I urge the immediate adoption of this badly needed legislation.

H.R. 7047

To suspend until January 1, 1984, the duty on certain flat knitting machines.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 7047, if enacted, would permit the duty-free entry of electronically or mechanically controlled power-driven flat knitting machines, except used machines, or on before December 31, 1983. This amendment to the Tariff Schedules of the United States (TSUS) would take effect upon enactment.

DESCRIPTION AND USES

Knitting is the process of forming fabric by creating interlocking loops of yarn, each loop hanging from another. Machines which manufacture such fabric consist of yarn feeds; needle housings in which replaceable hooked needles are installed; cams; drives; and fabric take-up mechanisms. Industrial machines are usually powered by electric motors; other machines may be driven manually. When a machine is operating, the hooked needles move within their respective housings in a manner determined by the cam settings. Each needle in its turn moves through an old loop, hooks onto a yarn end and pulls it through the old loop which is then cast off.

This procedure is accomplished differently in two major types of machines—circular and flat-bed. In a circular knitting machine, the needle housings (or slots) are in a cylinder positioned over a set of cams which engage the needle butts. As the cylinder rotates over the cams (or, in some machines, as the cams rotate in relation to a stationary cylinder), the needles rise and fall as their butts pass over the cams.

Flat-bed knitting machines are distinguished by the flat rather than circular configuration of the needle bed. Two major types of flat knitting machines are the V-bed machine and the links-and-links machine. The V-bed machine is characterized by two needle beds forming a 90-degree angle (as in an inverted V) with the needles crossing at the apex in the course of pulling down loops. V-bed machines are very versatile and can be used to manufacture garment fronts, backs, and sleeves for sweaters, as well as straight yard goods. In the United States, V-beds are typically used to manufacture collars, cuffs, and trim. However, the ony V-bed machine manufactured in this country is a narrow-bed machine used for making narrow fabrics such as trim and strapping.

A second major type of flat-bed machine is the links-and-links, or purl, machine. This machine includes a pair of needlebeds opposite each other but with both needlebeds on the same horizontal plane. The intervening area is spanned by needles with hooks at both ends. The needles can be transferred from one bed to the other, and can knit on either end depending on the setting of the controlling cams. The characteristic purl stitch of this machine produces a stretchy fabric identical on both sides. More intricate cam settings can result in complicated stitching sequences which can duplicate virtually any hand-knit design.

TARIFF TREATMENT

V-bed flat knitting machines, both power-driven and manual, are provided for in TSUS item 670.19. Other power-driven flat knitting machines are provided for in TSUS item 670.20. This provision covers knitting machines other than circular machines, except full-fashioned hosiery machines and V-bed flat knitting machines. Knitting machines covered by item 670.20 include warp knitting machines, certain manual knitting equipment, and flat knitting machines other than V-bed; e.g., links-and-links machines.

The MTN staged tariff rates applicable to MFN (column 1) imports under items 670.19 and 670.20 are as follows:

[In percent ad valorem]

Item	January 1—							
	1980	1981	1982	1983	1984	1985	1986	1987
670.19	7.6	7.3	6.9	6.6	6.2	5.8	5.5	5.
670.20	6.7	6.4	6.1	5.9	5.6	5.3	5.0	4.

The column 2 rate of duty is 40 percent ad valorem for both items. The rates applicable to less developed developing countries (LDDC) are as follows: 5.1 percent ad valorem for item 670.19; and 4.7 percent ad valorem for item 670.20.

Articles covered by items 670.19 and 670.20 are eligible under the Generalized System of Preferences (GSP) and are permitted duty-free entry into the United States when imported from designated beneficiary developing countries. During 1979, imports valued at $15,756 were entered from beneficiary countries under item 670.19, and imports valued at $15,500 were entered under item 670.20. Whether GSP imports under items 670.19 and 670.20 include the type of machines described in this legislation is unknown.

U.S. PRODUCTION AND EXPORTS

One U.S. firm, Lamb Knitting Machine Corp., Chicopee, Mass., reports that they manufacture negligible amounts of such knitting machines. Lamb, which employs 10 to 12 people, states that they produce a few narrow-bed V-bed flat knitting machines for the manufacture of braiding, strapping, and trimming materials. Lamb reports limited exports of its machines to at least four countries—France, West Germany, Greece, and South Africa. There are no other known exports of new machines.

U.S. IMPORTS AND CONSUMPTION

Item 670.19.—During 1975–79 total imports under item 670.19, V-bed flat knitting machines, were as follows:

	Quantity (units)	Entered value[1] (thousands)
Year:		
1975	655	$5,947
1976	435	7,026
1977	929	8,554
1978	612	5,471
1979	868	3,128

[1] We estimate that approximately 100 percent of the entered value of machines entered under item 670.19 may be attributed to the type of flat knitting machines discussed in this report.

Item 670.19 includes, in addition to power-driven machines for industrial use, a small number of inexpensive manual devices. For the most part these are imported duty free for educational use. They number fewer than 25 per year.

In the period 1975–79, the West German share of the U.S. import market ranged between 47 and 67 percent, by value, while the combined German and Swiss share accounted for 76 to 98 percent of the U.S. market. Industry sources report that three companies dominate the U.S. import market. They are Universal Maschinenfabrik, and Stoll & Co., both located in West Germany; and Edouard Dubied & Cie S.A., Switzerland.

Industry sources, including the U.S. manufacturer (Lamb), are of the opinion that import competition would not increase significantly as a result of the elimination of the dty on TSUS item 670.19. The U.S. manufacturer has supplied the domestic market for narrow-bed machinery almost entirely in recent years. The

market for machines such as those produced by Lamb has diminished since about 1973 when the double knit boom, which had stimulated sales of narrow-bed machines as an auxiliary to some double-knit operations, began its steep decline. A major importer of standard V-bed machines discontinued importation of narrow-bed machinery of the type made by Lamb in the early 1970's.

Item 670.20.—Total imports under item 670.20, well under half (approximately 30 percent) of which consisted of flat-bed machinery, were as follows:

Year:	*Entered value*[1] *(in thousands)*
1975	$4,627
1976	9,321
1977	8,423
1978	17,846
1979	15,939

[1] We estimate that approximately 30 percent of the entered value of machines entered under item 670.20 may be attributed to the type of flat knitting machines discussed in this report.

The U.S. import market for flat-bed knitting machines classified in item 670.20 is dominated by the same three firms (listed above), which supply the bulk of U.S. imports under item 670.19. Smaller contributions to U.S. imports are made by four Italian firms, as well as a Japanese firm and a British firm. U.S. consumption during 1975–79 was satisfied entirely by imports from the foregoing and from other minor suppliers.

POTENTIAL ANNUAL LOSS OF REVENUE

The average annual customs revenue loss under item 670.19 would be approximately $221,000; the average annual loss under item 670.20 would be approximately $337,000, bringing the combined average annual loss of customs revenue to $558.000. This estimate is based on 1979 import levels and on the staged reductions of the tariff rates in effect during 1980–83.

Detailed revenue estimates are contained in the following table:

ESTIMATED ANNUAL REVENUE LOSS, BY TSUS ITEM, 1980-83

Year	Total	Item 670.19[1]	Item 670.20[2]
1980	$594,000	$237,000	$357,000
1981	570,000	227,000	343,000
1982	544,000	215,000	329,000
1983	524,000	205,000	319,000

[1] We estimate that virtually all imports entered under TSUS item 670.19 would be subject to duty-free entry under this legislation.

[2] We estimate that approximately 30 percent of all imports entered under TSUS item 670.20 would be subject to duty-free entry under this legislation. See memorandum to the Committee on Ways and Means of the U.S. House of Representatives on H.R. 7004, 96th Congress, a bill to permit until July 1, 1982, the duty-free entry of tricot and raschel warp knitting machines, U.S. International Trade Commission (1980).

TECHNICAL COMMENTS

The qualifying language electronically or mechanically controlled in the proposed product description is unnecessary and probably should be omitted since, we understand, all power-driven flat knitting machines are so controlled. We also understand that virtually all imports of this machinery are new machines. Further, we are advised that the Customs Service would incur some additional administrative burdens in attempting to distinguish between new and used machines. Accordingly, we suggest that the proposed product description be amended to omit the phrase except used machines.

Since the legislation would suspend the duty on all power-driven flat knitting machines, there is no need to specify V-bed or other. V-bed and other flat knitting machines are all included within the scope of the product description suggested below. We also note that it has been the Committee's practice to specify an effective date terminating most duty suspensions on June 30 rather than December 31.

Based on the foregoing comments, we recommend the following product description which is intended to cover the merchandise of interest to the proponents of this legislation:

Power-driven flat knitting machines (provided for in items 670.19 or 670.20, part 4E, schedule 6) * * *.

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in response to your request for the views and recommendations of this Office on H.R. 7047, a bill "To suspend until January 1, 1984, the duty on certain flat knitting machines."

The Office of the United States Trade Representative does not object to the enactment of H.R. 7047, provided it is amended as proposed by the Department of Commerce to exclude certain knitting machines that are produced domestically and to limit the suspension to only the column 1 duty. It is our understanding that this duty suspension could enhance the competitiveness of hose textile mills which use these knitting machines.

As a mater of policy, this Office prefers that reductions of tariffs be accomplished through international trade negotiations in which the President has the opportunity to obtain reciprocal benefits for U.S. exporters. In this case, however, we believe that the economic benefits of duty-free entry of these knitting machines to U.S. producers and consumers warrant the unilateral suspension of the duty.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these comments.

DEPARTMENT OF STATE

I have been asked to reply to your request for the views of the Department of State on H.R. 7047, a bill providing duty free entry for certain flat knitting machines.

We understand the primary purpose of the proposed legislation is to provide duty free entry for certain flat knitting machines not produced in the United States. We note, however, that the description for such knitting machines provided in the nomenclature for proposed Item 912.07 of the Tariff Schedules of the United States is such that it would also permit duty free entry for flat knitting machines like or directly competitive with types produced in the United States used in the production of narrow fabrics such as strapping or braiding. We understand domestically produced types of the knitting machines of interest are not manufactured to specifications exceeding twenty inches in width and that, if the nomenclature set forth in the bill for proposed Item 912.07 were revised to provide that the imported machine must exceed twenty inches in width, the proposed duty free treatment would be limited to types not produced in the United States.

We note that the proposed tariff suspension would also apply to imports of knitting machines from countries whose products are not accorded most favored nation treatment. We prefer that proposals for tariff reductions applicable to products from such countries be considered in the context of negotiations conducted under Title IV of the Trade Act of 1974 relating to trade relations with countries not currently receiving nondiscriminatory treatment. In such negotiations the United States can consider the possibility of according most favored nation treatment to the products of such countries in exchange for concessions of benefit to United States exports.

If H.R. 7047 were amended to limit duty free entry to knitting machines more than twenty inches in width and to machines from countries accorded most favored nation treatment, the Department of State would have no objection to its enactment.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

H.R. 7047 would suspend the duty on certain flat knitting machines. The AFL-CIO sees no reason to make unilateral reduction in tariffs at this time. Many of the U.S. trading partners are increasing trade barriers. It seems unrealistic for the U.S. to reduce U.S. barriers during this period of high imports and slowing exports.

FREEMAN, MEADE, WASSERMAN & SCHNEIDER,
New York, N.Y., May 15, 1980.

JOHN H. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: This letter is submitted on behalf of L & K Company, Inc. of Shelby, North Carolina, a manufacturer and seller of ladies' sportswear. L & K Company, Inc. opposes the passage of H.R. 7047, which proposes to suspend until January 1, 1984 the customs duties on V-bed flat knitting and other knitting machines provided for under items 670.19 and 670.20, Tariff Schedules of the United States.

The textile industry is highly competitive and manufacturers realize only a relatively small profit. Domestic manufacturers who, prior to January 1, 1980, imported V-bed flat knitting machines provided for under Tariff Schedule item 670.19 paid duty at the rate of 8 percent or higher and at the rate of 7 percent or higher for machines provided for under Tariff Schedule item 670.20. These machines have a long useful industrial life and are replaced only infrequently. Thus, manufacturers who have fulfilled their machine needs would be at an economic disadvantage with respect to those manufacturers who will be able to import knitting machines free of duty. The cumulative effect of a duty-free "holiday" through January 1, 1984 on these knitting machines would likely be to suppress the comparative profitability of domestic manufacturers who have, over a period of years, satisfied their machine requirements. In any event, machines imported after January 1, 1980 obtain the benefits of the duty rate reductions enumerated in Presidential Proclamation No. 4707 and should not be subject to further "windfall" reductions.

For the for egoing reasons, we respectfully request the Committee to recommend that H.R. 7047 not be passed.

Sincerely yours,

KENNETH NATHAN WOLF
(On behalf of L & K Co., Inc., Shelby, N.C.).

MAYER TEXTILE MACHINE CORP.,
Clifton, N.J., May 14, 1980.

COMMITTEE ON WAYS AND MEANS,
U.S. House of Representatives, Longworth Building, Washington, D.C.

GENTLEMEN: As Vice President of Mayer Textile Machine Corporation of 310 Brighton Road, Clifton, New Jersey, I am writing in reference to bill H.R. 7047. I hereby summarize observations and reservations we have against a bill that would remove or reduce duties for Column 2 countries with regard to textile machinery, as follows:

1. Mayer Textile Machine Corporation is a New Jersey corporation with the main seat in Clifton, New Jersey and with branch facilities in Greensboro, North Carolina.

Mayer Textile Machine Corporation has been in existence as an operating company for more than 25 years. It is the daughter company of Karl Mayer Textilmaschinenfabrik GmbH, Bruehlstrasse 25, 6053 Obertshausen, West Germany, a leading manufacturer—worldwide—in the sector of warp knitting machinery.

3. Mayer Textile Machine Corporation has been the distributor and assembler of such warp knitting machinery in the U.S.A. and has presently a work force of about 100 in Clifton, New Jersey, and of 80 in Greensboro, North Carolina.

4. The Mayer warp knitting machinery has been widely and primarily accepted and operated by the American textile industry.

5. We are presently in the middle of a program calling for a large capital investment for the purchase of numerical control electronic tool machines. The purpose for this large investment is to increase our capabilities to manufacture components for Mayer machines here in Clifton. Eventually, our plans call for the complete manufacture and assembly of warp knitting machines here in the U.S.A. Naturally, this will call for additional personnel to be employed as our plans progress.

6. The granting of duty free import to Column 2 countries would have immediate adverse effect on the business if Mayer Textile. It is well known that Column 2 countries may permit price structures to their manufacturers which in their dumping effect may seriously jeopardize the competitive operation of Mayer Textile Machine Corporation.

7. Mayer Textile Machine Corporation is very much concerned that a bill granting duty free imports to Column 2 countries with regard to any type of textile machinery could, if passed, open the door for further concessions that would lead to the elimination of duties for Column 2 countries on other machinery, including warp knitting machinery.

We therefore support a change in the bill to keep the duties of Column 2 countries at their present level. We ask that you take notice of the objections raised by us.

Please accept my sincere appreciation for your favorable consideration of the above concern and request.

Sincerely,

NAT BRODY,
Vice President.

H.R. 7054

To amend the Tariff Schedules of the United States in order to make the duty on plastic netting approximately equal to the duty now charged on the raw plastic from which the netting is made (10 per centum plus 1.5 cents per pound).

U.S. INTERNATIONAL TRADE COMMISSION

(Memorandum of May 21, 1980)

PURPOSE OF THE BILL

H.R. 7054, if enacted, would amend the Tariff Schedules of the United States (TSUS) in order to make the duty on plastic netting approximately equal to the duty now charged on the raw plastic from which the netting is made (10 per centum plus 1.5 cents per pound).[1]

The bill would create a new item (771.41) in the TSUS for "Plastic netting made by extrusion or by perforating a plastic sheet and subsequently orienting or not orienting, and not elsewhere provided for". The column 1 (most-favored-nation—MFN) rate of duty would be 17 percent ad valorem; no column 2 rate of duty (which applies to designated Communist-dominated countries) is shown for the new item.

DESCRIPTION AND USES

The plastic netting covered herein is made from polyethylene resin and polypropylene resin as well as from combinations of the two. The plastic netting is produced by an extrusion machine process in one continuous operations. The plastic resin is extruded as hot filaments which are laid across one another. These filaments fuse or weld together as they come into contact with each other. As the filaments are fusing together, a soft tubing of plastic mesh is being formed. As a continuation of this operation, the tubing is then usually split into a sheet of mesh onto continuous rolls (approximately two feet in diameter). The product emerging from the extruder is usually clear (water white) in color and ranges from 10 to 100 mils in thickness with the bulk falling between 30–70 mils in thickness (1 mil equals 0.001 inches). The width varies from a tubular filament-type form which is 3 to 4 inches in diameter (forming a six-inch wide roll) to the more typical flat sheet form which is 4 inches to 48 inches in width. The bulk of the material is between 4 inches and 15 inches in width.

The following are the three major markets served by this product:

Market:	*Approximate share (Percent)*
Medical	40
Packaging	40
Original equipment manufacturers (OEM)	20

In the medical industry this product serves as the support medium for filtering systems such as kidney dialysis units and blood oxygenators. In the packaging industry the netting is converted to a meshed bag which is used to ship, protect, and display such items as flower bulbs, onions, and citrus goods. It also has industrial packaging applications such as pallet wrapping.

In the OEM industry, automobile manufacturers use the filament in one-half inch diameter mesh to cover the linkage rods of door handles. It serves a dual purpose: (1) as a bearing surface that keeps the metal linkage rods from rubbing against the door and (2) it serves to keep the linkage from rattling while driving over rough surfaces.

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[1] The duty rate in the title of the bill is in error as polyethylene and polypropylene are now dutiable under TSUS items 445.33 and 445.52 at 1.3 cents per pound plus 10 percent ad valorem.

The imported material is reported to be identical in every manner with the domestic netting. However, imports reportedly have a more difficult time penetrating the U.S. packaging industry because the advertising labels which are incorporated in the domestic bags are custom printed, and the U.S. producers of such labels produce a product superior to that which can be obtained offshore.

TARIFF TREATMENT

The plastic netting provided for in this legislation which is rectangular in shape, over 15 inches in width and over 18 inches in length, and which has not been usefully processed (except surface processed) would be classified under TSUS items 771.43, if flexible, or items 771.55, if not flexible. If such plastic netting is made or cut into nonrectangular shapes, or measures not over 15 inches in width, or measures not over 18 inches in length, or is ground on the edges, drilled, milled, hemmed or otherwise usefully processed (except surface-processed), it would be classified under the provision for articles not specially provided for, of rubber or plastics, in TSUS item 774.55. All of the foregoing TSUS items are basket categories.

The following table shows the current rates of duty which apply to plastic netting of the kind in question from those countries having MFN status (column 1), the future column 1 rates of duty negotiated under the most recent Multilateral Trade Negotiations (MTN), rates of duty which apply to imports from countries designated by the President as being under Communist domination or control (column 2), and a reference as to the eligibility for duty-free treatment under the Generalized System of Preferences (GSP)[2] for products entered under TSUS items 771.43, 771.55, and 774.55.

PLASTIC NETTING: U.S. RATES OF DUTY, PRESENT AND NEGOTIATED, BY TSUS ITEMS

TSUS item No.	Description	Percent ad valorem			
		Present col. 1 rate of duty[1]	Negotiated col. 1 rate of duty[2]	Col. 2 rate of duty[3]	GSP eligibility
771.43	Not of cellulosic plastics materials: Film, strips, and sheets, all the foregoing which are flexible: Other	6.0	4.2	25	Yes.
771.55	Other	10.0	5.8	35	Yes.
744.55	Articles not specially provided for, of rubber or plastics: Other	8.5	5.3	80	Yes.[4]

[1] Effective Jan. 1, 1972.
[2] Rate negotiated under the MTN in Geneva (Tokyo round), to be achieved through 8 equal staged reductions, over a 6½-yr period commencing with the effective date for the United States of the Customs Valuation Agreement (expected to be July 1, 1980).
[3] Rate provided in the Tariff Act of 1930.
[4] Excluding imports from Hong Kong, effective Jan. 1, 1976.

The polyethylene and polypropylene resins, which are the raw material from which the subject netting is made, are classified under TSUS items 445.30 and 445.52, respectively, and both have a column 1 duty rate of 1.3 cents per pound plus 10 percent ad valorem. Based on 1979 data, the ad valorem equivalent (AVE) duty rates for these resins were as follows:

	Percent
Low and medium density (0.940 and below) polyethylene	13.4
High density (over 0.940) polyethylene	13.5
Polypropylene	12.1

STRUCTURE OF THE DOMESTIC INDUSTRY

Three firms dominate the plastic netting market—Bemis Company, Inc., of Minneapolis, Minn.; E. I. du Pont de Nemours & Co., Inc., of Wilmington, Del.; and Nalle Plastics, Inc., of Austin Tex. Plastic netting is produced by Bemis at

[2] The Generalized System of Preferences (GSP), under title V of the Trade Act of 1974, provides for duty-free treatment of specified eligible articles imported directly from designated beneficiary developing countries.

a plant in St. Louis, Mo.; by du Pont at a plant in Buffalo, N.Y.; and by Nalle at a plant in Austin, Tex.

Du Pont and Nalle produce plastic netting for all three markets, while Bemis serves only the packaging industry. Industry sources report that du Pont and Nalle are the dominant producers, with about equal market shares. However, Nalle is the leading U.S. producer of plastic netting for the medical industry. Industry sources estimate that approximately 1,000 people are now employed in the domestic plastic netting industry.

DOMESTIC PRODUCTION

Official statistics are not available for the production of plastic netting. Industry sources estimate that the U.S. market for the plastic netting described herein amounted to $7 million in 1979 and is growing at an average rate of 7 percent per year.

These sources further estimated that the packaging market accounted for $3 million in 1979 and was growing at 9 percent per year, and the OEM market accounted for $1.5 million in 1979 and is growing at about 5 percent per year. The medical filter market for this netting was estimated at $2.5 million in 1979 with an erratic growth pattern in earlier years. The medical filter market for plastic netting is now growing at about 3 percent per year and presently is a mature market serving principally the replacement industry. Reportedly, it is also the market hardest hit by import competition.

U.S. IMPORTS

Because plastic netting now enters in basket categories (TSUS items 771.43, 771.55, and 774.55), official statistics are not available.

Trade sources report that imports of plastic netting for medical uses increased from trace amounts in 1977 to about $1.5 million in 1979. Virtually all of these imports are reported to come from West Germany. The reason for this jump in imports is that the U.S. producers lost the technical lead they had enjoyed from 1970 through 1977.

Imports of plastic netting for packaging applications are negligible for several reasons. First, as stated earlier, these products require custom-made labels in which the U.S. industry is the leader. Second, for technical reasons, netting for this market is less dense than for the medical market. As the product density drops, the freight rate increases proportionately.

The size of imports for the OEM market is small. Imports are estimated by industry at about $300,000 in 1979, most of which came from West Germany. These will probably remain small as this is a custom market.

U.S. EXPORTS

Official statistics for U.S. exports of plastic netting are not separately available. These data items are covered in basket categories (Schedule B items 771.4400, 771.4600, 771.5200, and 771.6000).

Industry sources report that exports of plastic netting increased from 1972 to 1976 when they were approximately $100,000. Exports reportedly declined to $40,000 in 1977, and have been negligible since then. Western Europe was the principal market for U.S. exports.

APPARENT U.S. CONSUMPTION

Apparent U.S. consumption for plastic netting now equals production plus imports, as exports are negligible. Trade sources estimate that in 1979 apparent consumption of plastic netting amounted to about $9 million, up from about $8.4 million in 1978.

POTENTIAL GAIN OF REVENUE

H.R. 7054 proposes to break out plastic netting as a new item (771.41) at a rate of duty of 17 percent ad valorem. As shown in the section on tariff treatment, plastic netting now enters the United States at 6 percent ad valorem (TSUS item 771.43), 10 percent ad valorem (TSUS item 771.55), or 8.5 percent ad valorem (TSUS item 774.55) depending on the products' rigidity and dimensions. Because separate import data do not exist for plastic netting, the potential gain in revenue resulting from enactment of H.R. 7054 cannot be accurately determined.

However, based on estimated annual imports of approximately $1.8 million currently subject to an average duty rate of 8.5 percent ad valorem, it can be roughly estimated that the enactment of this legislation would result in an annual increase in revenue of approximately $152,000.

GATT CONSIDERATIONS

Since the enactment of H.R. 7054 would result in an increase in the duty rate for certain plastic netting, it would be inconsistent with tariff concessions granted by the United States under the General Agreement on Tariffs and Trade (GATT) and could result in claims for compensation by contracting parties which may be adversely affected by the increased duty rate.

TECHNICAL COMMENTS

As noted earlier, the duty rate in the title of the legislation should read "(1.3 cents per pound plus 10 percent ad valorem)".

There are also several technical deficiencies in the proposed new provision. Item number 771.41 which is proposed for the new provision is currently being used in the TSUS. The legislation proposes to insert the new item into subpart 3 of part 2 of schedule 7 of the TSUS. However, the inclusion of such a provision in this subpart would be inconsistent with the headnotes to this subpart since the new provision would include plastic netting "made by * * * perforating a plastic sheet" and since subpart headnote 2 (iv) provides that this subpart does not cover articles "which have been ground on the edges, drilled, milled, hemmed *or otherwise usefully processed* (except surface processed)" (Emphasis added). The proposed new provision should also set forth a column 2 rate of duty which would apply to imports of the subject netting which are produced in those Communist-dominated countries set forth in General Headnote 3(f) of the TSUS.

It is suggested that the proposed new provision be inserted into subpart C of part 12 of schedule 7 ("Specified Rubber and Plastics Products") as item 773.40 and that the article description for the new item be amended to read "Netting, of rubber or plastics." Although the suggested article description would appear to be broader than that currently proposed in the legislation, as a practical matter, that is not the case. Both provisions would cover virtually all netting which is found by Customs to be "of rubber or plastics" and both would exclude netting which is determined to be of textile (i.e., manmade fibers) materials and therefore classified in TSUS item 389.62.* It is believed that the suggested language would be easier for Customs to administer, however, since it would obviate the need for Customs to differentiate between netting made by extrusion and that made by perforation.

Finally, it is noted that although the stated purpose of the legislation is to make the duty on netting approximately equal to the duty assessed on the raw plastic from which the netting is made, the proposed duty rate of 17 percent ad valorem is somewhat higher than the AVE's for such materials for 1979 which, as previously stated, ranged from 12.1 percent to 13.5 percent.

(Memorandum of Aug. 19, 1980[1])

PURPOSE OF THE LEGISLATION

H.R. 7054, if enacted, would amend the Tariff Schedules of the United States (TSUS) to increase the duty on plastic netting. This duty increase would become effective upon the date of enactment.

The purpose of this legislation is to make the rate of duty on plastic netting approximately equal to the rate of duty presently charged on the raw plastic from which the netting is made. The principal industry proponent for this proposal is Nalle Plastics, Inc.[2]

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*The Customs practice in this regard is to consider only those articles which have been produced from previously formed filaments to be textile articles. All articles which are produced in one single continuous operation (e.g., by an extrusion process) that forms the completed product, such as the subject netting, would be considered to be "of rubber or plastics". U.S. Customs General Notice No. 521465, published in the Federal Register, Oct. 31, 1979 (44 F.R. 62637).

[1] This memorandum is based on H.R. 7054, as reported by the Committee on Ways and Means (Union Cal. No. 734) July 22, 1980.

[2] According to George Nalle, Jr., Nalle Plastics is a family corporation owned primarly by himself and his wife.

DESCRIPTION AND USES

The plastic netting covered herein is made from polyethylene resin and polypropylene resin as well as from combinations of the two.[3] The plastic netting is produced by an extrusion machine process in one continuous operation. The plastic resin is extruded as hot filaments which are laid across one another. These filaments fuse or weld together as they come into contact with each other. As the filaments are fusing together, a soft tubing of plastic mesh is being formed. As a continuation of this operation, the tubing is then usually split into a sheet of mesh onto continuous rolls (approximately two feet in diameter). The product emerging from the extruder is usually clear (water white) in color and ranges from 10 to 100 mils in thickness with the bulk falling between 30–70 mils in thickness (1 mil equals 0.001 inches). The width varies from a tubular filament-type form which is 3 to 4 inches in diameter (forming a six-inch wide roll) to the more typical flat sheet form which is 4 inches to 48 inches in width.[4]

Markets for plastic netting are diverse.[5] The largest single market in the United States is packaging. Other markets include medical applications (bandage dressings, equipment filters, etc.)[6] original equipment manufacturing (OEM), fencing and barriers, agricultural and horticultural applications, candle liners, textile backing and reinforcement, shelf liners, filters for screening food material from getting into equipment, soil stabilization, sewage treatment, aquacultural applications, etc.

For example, in the medical industry this product serves as the support medium for filtering systems such as kidney dialysis units and blood oxygenators. Examples of usage in the packaging industry include conversion of the netting to a meshed bag which is used to ship, protect, and display such items as toys, flower bulbs, onions, and citrus goods. It also has industrial packaging applications such as pallet wrapping.

In OEM applications, for example, automobile manufacturers use the filament in one-half inch diameter mesh to cover the linkage rods of door handles. It serves a dual purpose: (1) as a bearing surface that keeps the metal linkage rods from rubbing against the door; and (2) it serves to keep the linkage from rattling while driving over rough surfaces.

There are three different types of netting—diamond mesh, the most widely used; squash mesh; and Del Net™. The square mesh is produced by Conwed and DuPont. Del Net™ is manufactured by Hercules. The diamond mesh is manufactured by the rest of the industry including Nalle Plastics and Maynard Plastics. DuPont and Poly Net also manufacture the diamond mesh netting. All types are made by the extrusion process. The diamond mesh netting has been most affected by import competition according to responses from industry contacts.

The imported material is reported by industry sources to be identical in every manner with the domestic netting. However, according to industry sources, imports have a more difficult time penetrating the U.S. packaging industry because the advertising labels which are incorporated in the domestic bags are custom printed, and the U.S. producers of such labels produce a product superior to that which can be obtained offshore.

TARIFF TREATMENT

The plastic netting provided for in this legislation which is rectangular in shape, over 15 inches in width and over 18 inches in length, and which has not been usefully processed (except surface processed) would be classified under TSUS item 771.43, if flexible, or item 771.55, if not flexible, if such plastic netting is made or cut into nonrectangular shapes, or measures not over 15 inches in width, or measures not over 18 inches in length, or is ground on the edges, drilled, milled, hemmed or otherwise usefully processed (except surface-processed), it would be classified under the provision for articles not specially provided for, of rubber or plastics, in TSUS item 774.55. All of the foregoing TSUS items are basket categories. These three categories are eligible for duty-free treatment under the GSP pursuant to General Headnote 3(c) of the TSUS.

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[3] According to Bemis contract, Plastic Net contact, and George Nalle, III, the resin primarily used in plastic netting is polyethylene.

[4] The information in this paragraph was supplied by George Nalle, III.

[5] Market and market share data in the Commission's previous report were obtained from George Nalle, III, Nalle Plastis and confirmed by Bemis and other industry contacts.

[6] An aide to Congressman Pickle and an importer advised Commission staff that the medical filter market may be reduced within the next five years because of the development of new technology.

The proposed article description would cover virtually all netting which is found, by Customs, to be "of rubber or plastics". It would exclude netting which is determined to be "of textile materials" (i.e., manmade fibers) and, thus, classifiable in TSUS item 389.62.[7]

PLASTIC NETTING: CURRENT U.S. RATES OF DUTY, BY TSUS ITEM

GSP	TSUS item No.	Brief description	Col. 1 rate of duty[1]	LDDC rate of duty[2]	Col. 2 rate of duty[3]
		Not of cellulosic plastics materials:			
		Film, strips, and sheets, all the fore-all the foregoing which are flexible:			
		Other:			
A	771.43	Other	5.8% ad val.	4.2% ad val.	25% ad val.
		Other:			
A	771.55	Other	9.5% ad val.	5.8% ad val.	35% ad val.
		Articles not specially provided for, of rubber or for, of rubber or plastics:			
		Other:			
A	774.55	Other	8.1% ad val.	5.3% ad val.	30% ad val.

[1] The col. 1 rate of duty is the Most-Favored-Nation (MFN) rate of duty (see General Headnote 3(g) of the TSUS).
[2] The LDDC rate of duty is a preferential rate of duty applicable to products of least developed developing countries (see General Headnote 3(d) of the TSUS).
[3] The col. 2 rate of duty is the non-MFN rate of duty applicable to products of certain Communist countries (see General Headnote 3(f) of the TSUS).

The polyethylene ad polypropylene resins, which are the raw material from which plastic netting is made, are classified under TSUS items 445.30 and 445.52, respectively. Based on 1979 data, the ad valorem equivalent (AVE) rates for these resins were as follows:

	Percent
Low and medium density (0.940 and below) polyethylene	13.4
High density (over 0.940) polyethylene	13.5
Polypropylene	12.1

RESINS: CURRENT U.S. RATES OF DUTY, BY TSUS ITEM[1]

GSP	TSUS item No.	Brief description	Col. 1	LDDC	Col. 2
A	445.30	Polyethylene resins	13.8% ad val.	12.5% ad val.	43% ad val.
A	445.52	Polypropylene resins	14.5% ad val.	12.5% ad val.	33.5% ad val.

[1] Both items are eligible for duty-free treatment under the GSP pursuant to General Headnote 3(c) of the TSUS.

RESINS AND PLASTIC NETTING: MTN STAGED DUTY RATE REDUCTIONS, BY TSUS ITEM[1] (EFFECTIVE JULY 1, 1980)

[In percent]

TSUS item No.	Rate from which staged	Year in which rate takes effect—							
		1980	1981	1982	1983	1984	1985	1986	1987
445.30	14.0	13.8	13.6	13.4	13.3	13.1	12.9	12.7	12.5
445.52	15.7	14.5	14.2	13.9	13.6	13.4	13.1	12.8	12.5
771.43	6.0	5.8	5.6	5.3	5.1	4.9	4.7	4.4	4.2
771.55	10.0	9.5	9.0	8.4	7.9	7.4	6.9	6.3	5.8
774.55	8.5	8.1	7.7	7.3	6.9	6.5	6.1	5.7	5.3

[1] All percentage figures are "percent ad valorem."

[7] The Customs practice in this regard is to consider only those articles which have been produced from previously formed filaments to be textile articles. All articles which are produced in one single continuous operation (e.g., by an extrusion process) that forms the completed product, such as the subject netting, would be considered to be "of rubber or plastics". U.S. Customs General Notice No. 521465, 44 Fed. Reg. 62637, Oct. 31, 1979.

STRUCTURE OF THE DOMESTIC INDUSTRY

There are eight known U.S. manufacturers of extruded plastic netting—Bemis Co., Inc. (Bemis), in St. Louis, Mo.; Conwed Corp. (Conwed), located in both Minneapolis, Minn., and Athens, Ga.; E. I. duPont de Nemours & Co., Inc. (DuPont), in Wilmington, Del.; Hercules, Inc. (Hercules), in Wilmington, Del.; Maynard Plastics, Inc. (Maynard Plastics), in Salem, Mass.; Nalle Plastics, Inc. (Nalle Plastics), in Austin, Tex.; Plastic Net Corp. (Plastic Net), in Buffalo, N.Y.; and Poly Net Corp. (Poly Net), located in Cornwells Heights, Penn. Industry sources contacted by the Commission staff are not aware of any major investment by the petrochemical industry in the plastic netting industry. The five largest companies in the plastic netting industry are Bemis, Conwed, DuPont, Hercules, and Nalle Plastics.[8] All domestic manufacturers were responsive to questions asked by Commission staff over the telephone.

EMPLOYMENT IN THE PLASTIC NETTING INDUSTRY

There are approximately 700 production and non-production workers engaged in the domestic manufacture of plastic netting in the eight U.S. companies known to produce this extruded product.[9] Few layoffs in 1980 have been reported to date and these layoffs, industry contacts[10] mentioned, were due to the U.S. recession and seasonal slumps but most employees have been rehired. However one manufacturer, Nalle Plastics, reports that it has had to lay off about one-third of its labor force and apparently believes that import competition is an important cause. Wages in the industry range between $6 and $12 per hour.[11] The average work week is 40 hours and, with some exceptions, may go as high as 50 hours per week.

Employment estimates by plant location were supplied by industry contacts who requested this information be treated as "business confidential". Plastic netting is a fairly young industry. According to the Plastic Net source, there are still many growing markets. Domestic industry contacts felt accumulation of data covering employment experience over the past five years would be burdensome and unnecessary.

A comment was made by Plastic Net concerning the labor intensity versus the capital investment required for machinery and research[12] in the plastic netting industry. Plastic Net believes that the plastic netting industry is relatively more capital intensive.[13] One importer stated that, if the legislation is enacted, he would have to lay off five employees.

DOMESTIC PRODUCTION

Official statistics are not available for the production of plastic netting. The value of the plastic netting domestic market is estimated to be $25–50 million.[14]

U.S. IMPORTS

Because plastic netting now enters in three basket categories and is not separately identified for statistical purposes (TSUS items 771.43, 771.55, and 774.55), official import data are not available.

Trade sources report that 1979 imports of plastic netting for medical uses came from West Germany. The size of imports for the OEM market, as reported by industry contacts, is small. Imports will probably remain small as this is a custom market.

Overall estimates by industry contacts[15] of U.S. imports of plastic netting for 1979 range widely from less than $100,000 to almost $1 million, but, even at the upper end of that range, imports would be less than 4 percent of the domestic market. Imports were reported from West Germany, Spain, Taiwan, Hong Kong,

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[8] Estimate by one industry source. From this and other telephone interviews with industry contacts, the staff estimates that the top five companies account for at least 85 percent, by value, of the plastic netting market.

[9] Roughly 70 percent or more are production workers based on figures presented by U.S. industry contacts.

[10] Plastic Net and another industry contact (July 1980).

[11] Higher salaries are paid to non-production workers according to telephone interviews with industry contacts.

[12] Machinery is generally very expensive and so is product/market development which foreign importers take advantage of in exploiting new markets, according to Plastic Net.

[13] However, machinery for diamond mesh netting is relatively cheap ($250,000 per machine) according to a larger domestic manufacturer.

[14] Bemis, DuPont and Hercules contacts.

[15] Tomac, Conwed, DuPont and HCM sources.

the Republic of Korea (ROK),[16] and Japan.[17] No mention was made of imports from column 2 sources by U.S. industry contacts. At the present time, plastic netting is eligible for GSP treatment and imports are reported (by Bemis contact) to have arrived from Taiwan, Hong Kong and the ROK.

U.S. IMPORTERS

Three importers are known to import extruded plastic netting into the United States. Two of these importers are located in the United States; the third company exports from West Germany and the Commission staff was unable to ascertain its address in the United States. The two importers located in the United States are H.C.M. Graphic Systems, Inc., (HCM) in Great Neck, N.Y.; and Tomac Corp. (Tomac) [18] in Middlesex, Mass. HCM is owned by Siemens Corp.[19] The third company is Norddeutsche Seekabelwerke A.G. (NS).[20] The NS plant is located in Nordenham, West Germany, according to Mr. Nalle, Jr. Imports may be shipped from Holland, Spain, the UK, and West Germany.[21]

Tomac and HCM contacts voiced oposition to this legislation. They contend that (1) the combination of the higher cost raw materials (resins) in Europe; (2) the expense of ocean freight and insurance; (3) the cost of labor in Europe, particularly in West Germany; (4) the reduced profit margins of American manufacturers; (5) the U.S. customs duty; and (6) the devaluation of the dollar have all resulted in lost sales due to increased costs. HCM and Tomac claim that they must charge prices at least as high as those of U.S. manufacturers and up to 60 percent higher. They state that the quality of the imported product is about equal to, or better than, the quality of the domestically manufactured netting. When asked by the Commission staff why customers [22] buy the imported product, one importer responded that the customers want a second source of supply. Further, if the importers were to cease selling to the markets they primarily serve, there would be perhaps one or two domestic manufacturers to service customers' needs. This could, according to HCM, "result in a shared monopoly in the medical and OEM markets".[23]

U.S. EXPORTS

Official statistics for U.S. exports of plastic netting are not separately available. These data are covered in basket categories (Schedule B items 771.4400, 771.4600, 771.5200, and 771.6000).

Overall export estimates could be made, but DuPont, Plastic Net, Conwed, and Bemis are known exporters of plastic netting. Although exports are made to markets world-wide, most go to Europe, Australia, South America, the Far East, and Mexico. Nalle Plastics have stated their interest in developing export markets for their products. However, they claim that U.S. exports are inhibited by much higher European tariffs.[24]

APPARENT U.S. CONSUMPTION

Apparent U.S. consumption for plastic netting now equals production plus imports, since exports are negligible.

U.S. CONSUMERS OF PLASTIC NETTING

The Commission staff requested but was unable to obtain customer lists, from domestic manufacturers and U.S. importers of the plastic netting under consid-

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[16] One industry source was unaware of significant imports from these countries.

[17] Imports of plastic netting for produce packaging for 1977 and into 1978 were quite large and come mostly from Europe, and most probably from Spain, Italy, and the UK, according to an industry source.

[18] Imports are primarily for produce packaging for which they sell and service the packing equipment along with the netting.

[19] HCM also states that they import plastic netting from West Germany and that the merchandise is used in packaging; for the protection of machinery components; and as filter material for medical equipment.

[20] Information provided by Congressional aide, DuPont source, and Mr. Naller Jr.

[21] The Commission staff was unable to interview NS because industry sources could not provide a U.S. location for NS; therefore, other countries exporting plastic netting cannot be verified but the Commission staff believes that NS exports from West Germany and surrounding countries.

[22] The Commission staff was unable to obtain customer lists from importers.

[23] Letter (dated July 23, 1980) from HCM to Commission staff.

[24] Nalle Plastics reports that a potential export market in Sweden is protected by a "25 percent customs duty and 4.1 percent extra tax" on imports of plastic netting from the United States.

eration. Citrus growers, farmers, and kidney-dialysis machine manufacturers are examples of U.S. consumers of this plastic netting. U.S. manufacturers felt that their customers would oppose an increase in the tariff rate because customers are interested in purchasing the plastic netting at the lowest possible price.

POTENTIAL INCREASE IN REVENUE

This legislation would create a specific provision for plastic netting as a new item (773.400) dutiable at an MFN rate of 17 percent ad valorem and a column 2 rate of 47 percent ad valorem. Plastic netting now enters the United States at 5.8 percent ad valorem (TSUS item 771.43), 9.5 percent ad valorem (TSUS item 771.55), or 8.1 percent ad valorem (TSUS item 774.55) depending on the product's rigidity and dimensions. Because separate import data do not exist for plastic netting, the potential increase in revenue resulting from this amendment to the TSUS cannot be accurately determined.

However, based on estimated annual imports of approximately $1 million currently subject to an average duty rate of 7.8 percent ad valorem, it can be estimated that an increase in the tariff to 17 percent ad valorem would result in an increase in customs revenue of approximately $92,000 per year.

GATT CONSIDERATIONS

Since enactment of this legislation would result in unilateral increase in the rate of duty applicable to certain plastic netting, it would be inconsistent with tariff concessions previously negotiated by the United States under the General Agreement on Tariffs and Trade (GATT).

IMPORT RELIEF SOUGHT BY THE DOMESTIC INDUSTRY

Nalle Plastics sought administrative import relief from the U.S. Customs Service and the U.S. Department of Commerce approximately three years ago. On July 20, 1979, the Commissioner of Customs denied Nalle Plastics request for a change in the classification practice relating to imports of plastic netting.[25] Maynard Plastics, Bemis and Plastic Net report that they have experienced or foresee problems in the near future resulting from imports of plastic netting. Bemis, Maynard Plastics and Plastic Net have not sought administrative import relief from the U.S. Government.

Nalle Plastics has not sought statutory relief from injurious imports from the U.S. International Trade Commission.[26] Maynard Plastics, Bemis, Nalle Plastics, and Plastic Net [27] expressed concern about the impact of imports of plastic netting to the Commission staff in telephone interviews during the week of July 7, 1980. Based on staff interviews with Conwed and Hercules contacts, we understand that the proprietary nature of Conwed's and Hercules' products has minimized import competition.[28] Dupont and Poly Net have not, as yet, felt threatened by imports of plastic netting.

TECHNICAL COMMENTS

To conform with present usage in subpart C, part 12, schedule 7, TSUS, we recommend that a comma be inserted in the proposed article description for item 773.40, as follows: "Netting, of rubber or plastics. . . .".

We note that, although the stated purpose of the legislation is to make the duty on netting approximately equal to the duty assessed on the raw materials

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[25] Customs treated Nalle Plastics written requests as an American Manufacturer's Petition pursuant to section 516(a) of the Tariff Act of 1930 (19 U.S.C. 1516(a)). Nalle Plastics sought to have Customs classify this product as "other textile articles not specially provided for, of man-made fibers in item 389.62". If granted, Nalle Plastics petition would have resulted in a tariff of 25 cents per pound, plus 15 percent ad valorem. The Customs Service concluded, after consideration of Nalle Plastics petition, that "the present practice of classifying this merchandise is correct" *See* U.S. Customs File No. 057964 (July 29, 1979).

[26] There are no requests, to date, in the Commission's files on the plastic netting industry for import relief by Nalle Plastics or any other domestic plastic netting manufacturer.

[27] Markets at Plastic Net differ from those at Bemis, Nalle Plastics, and Maynard Plastics because of the heavier polyethylene products produced, according to an industry contact. This same industry contact does not currently perceive any threat from imports, but does foresee problems in 18 months to 2 years.

[28] The Conwed contact has seen no imports of square mesh plastic netting. Hercules has developed their own product line such that they, too, do not perceive an import threat at the present time.

(resins) from which the netting is made, the proposed duty rate of 17 percent ad valorem is somewhat higher than the AVE's for such materials for 1979 which, as previously stated, ranged from 12.1 percent to 13.5 percent. We also note that the recently-proclaimed MFN (column 1) rates for these resins are 13.8 to 14.5 percent ad valorem. The MTN concessions will result in a further decrease in these rates to 12.5 percent ad valorem in 1987. Accordingly, if the Committee's intention is to enact a rate of duty for plastic netting "approximately equal to the duty charged on the raw plastic [resins] from which the netting is made", the proposed MFN (column 1) rate would be between 12.5 and 14.5 percent ad valorem.

SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

This is in response to your request for the views and recommendations of this Office on H.R. 7054, a bill "To amend the Tariff Schedules of the United States in order to make the duty on plastic netting approximately equal to the duty now charged on the raw plastic from which the netting is made (10 per centum plus 1.5 cents per pound)."

The Office of the United States Trade Representative opposes enactment of H.R. 7054. If enacted, H.R. 7054 would increase the column 1, most-favored-nation (MFN) rate of duty on plastic netting entering the United States from 6 percent ad valorem to 17 percent ad valorem. This tariff is subject to concessions made by the United States under the General Agreement on Tariffs and Trade and is bound against increase. Hence, any increase in the tariff on plastic netting would render this country subject to claims for compensation or to retaliation by affected countries, thus disadvantaging other U.S. industries.

We note that Congress has already provided liberalized administrative remedies in the Trade Act of 1974 to deal with domestic industries which believe they are experiencing serious import injury or threat thereof. We believe that this procedure, which involves a thorough investigation by the U.S. International Trade Commission, is the appropriate recourse for the domestic plastic netting industry if it believes it is faced with injurious import competition.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these comments.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 7054, a bill "To amend the Tariff Schedules of the United States in order to make the duty on plastic netting approximately equal to the duty now charged on the raw plastic from which the netting is made (10 per centum plus 1.5 cents per pound)."

If enacted, H.R. 7054 would amend the Tariff Schedules of the United States (TSUS) to provide a separate tariff line item for plastic netting. The column-1, most-favored-nation (MFN) rate of duty would be increased to 17 percent ad valorem. A column-2 statutory rate of duty would not be provided. Imports of plastic netting currently enter the United States under TSUS item 771.43 and are subject to a column-1 rate of 6 percent ad valorem.

The Department of Commerce opposes enactment of H.R. 7054. We have no evidence that increased protection from import competition for the domestic plastic netting industry is needed.

The development of data necessary to determine whether the domestic industry is being seriously injured, or threatened with serious injury, by increased import competition would require a thorough investigation of competitive conditions in the industry. The Trade Act of 1974 provides a mechanism for such an investigation.

Under that statute, domestic industries, firms, or groups of workers which believe they are seriously injured, or threatened with serious injury, by imports may petition for relief from imports and assistance to help them adjust to imports. In our opinion this procedure, which involves a thorough investigation by the U.S. International Trade Commission, is the appropriate recourse for the domestic plastic netting industry if it feels it is faced with injurious import competition. Moreover, this process would permit proper attention to be given to the competitive situation with respect to the products included in the coverage of the bill.

63-673 O - 80 - 57

It should be noted that the tariffs on the TSUS items in this bill are subject to concessions made by the United States under the General Agreement on Tariffs and Trade and are bound against increase. Hence, any increase in the duties on these items would render this country subject to claims for compensation or to retaliation by affected countries, thus disadvantaging other U.S. industries. The Department believes it is inappropriate to jeopardize our trading interests in a case in which injury has not been demonstrated.

Finally, the bill as drafted contains a number of technical errors. First, the term "plastic netting" fails to define adequately the type of product subject to the legislation. Plastic netting could include textile netting, plastic netting for household use, netting for medical use, fish nets and possibly other products. The Department of Commerce defers to the Customs Service for a correct description for the product. Secondly, the rate stated in the title for the raw plastic material is incorrect. We believe polyethylene and polypropylene resins are the raw plastic materials referred to. These products currently enter the United States under TSUS items 445.30 and 445.52, respectively. The current rate of duties on these products is 10 percent *ad valorem* plus 1.3 cents per pound. The *ad valorem* equivalents of these duties based on 1979 trade are 13.5 and 12.1 percent respectively—lower than the 17 percent which would be established by the bill. Moreover, the bill proposes TSUS item number 771.41 for plastic netting. TSUS item number 771.41 is currently in use within the existing schedules for another product.

We have been advised by the Office of Management and Budget that they have no objection to the submission of our letter to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF STATE

I have been asked to reply to your request for the views of the Department of State on H.R. 7054, a bill which is intended to increase the duty applicable to certain plastic netting through a revision of tariff nomenclature.

The Department of State recommends against enactment of the proposed legislation.

We understand that the proposed revision stems from a concern that imports are adversely affecting domestic production. We believe that existing administrative procedures prescribed by the Congress provide a fair and equitable way for United States producers, including those manufacturing plastic netting, to seek relief if they believe that increased imports are causing or threatening serious injury to their industry. Legislative action is, therefore, unnecessary. Moreover, the proposed legislation could be challenged by our trading partners as a violation of our commitments under the General Agreement on Tariffs and Trade (GATT) and could require us to provide compensation to affected countries or risk retaliation against exports of other United States industries.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

H.R. 7063

To amend the Tariff Act of 1930 to increase the dollar value of merchandise eligible for informal entry.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE BILL

H.R. 7063, if enacted, would amend the Tariff Act of 1930 to increase the aggregate value of a shipment of imported merchandise under the informal entry procedure from $250 to $600.

BACKGROUND INFORMATION

Originally the Tariff Act of 1930 provided that the informal entry procedure was available to importers where the merchandise did not exceed $100 in value. In 1953, section 498, Tariff Act of 1930, as amended (19 U.S.C. 1498), was amended to allow the use of the informal entry procedure where the aggregate value of a shipment did not exceed $250.

The claim has been made by importers in recent years that by reason of inflation the amount of merchandise which can be imported under each informal entry has greatly decreased. It is contended it now requires a value of $600 to import that which could have been imported at a value of $250 in 1953.

A number of bills have been introduced in Congress during recent sessions to increase the dollar value amount for merchandise to be imported by informal entry. In H.R. 9220, introduced in 1975, the value of merchandise to be imported under the informal entry procedure was set at $500, but that provision was never enacted into law. A bill to provide for Customs procedural reform, H.R. 8149, as introduced on June 30, 1977, set the upper limit for informal entry at $600. Although this latter bill was essentially enacted as the Customs Procedural Reform and Simplification Act of 1978 (92 Stat. 888), the informal entry provision had been deleted from the bill.

In a report of July 20, 1977, to the Committee on Ways and Means on H.R. 8149, which bill is referred to in the preceding paragraph, it was stated in part by the Commission:

The enactment of the bill may, however, affect the collection and reporting of statistical data. Whereas, under present practice the Bureau of the Census compiles complete data on formal entries (at the 7-digit level), it takes only a 1 percent sample of informal entries for the purpose of estimating the overall total value of the U.S. imports. Since much of the work of the U.S. International Trade Commission depends on accurate trade data on individual products, we are somewhat concerned that the enactment of the bill in its present form could impair our ability to provide complete and thorough analyses in responding to congressional and administrative requests and in conducting investigations concerning import competition.

The requirement that an "accurate statement specifying kinds and quantities of all articles imported in such shipment and the value of the total quantity of each kind of article" must be submitted for shipments which exceed $250 is obviously designed to minimize the resulting loss of statistical data. It is suggested, however, that the data would be more useful if importers of shipments valued over $250 were also required to provide the 7-digit TSUSA reporting number for each article, as well as the countries of origin and exportation and the date of exportation.

FORMAL AND INFORMAL ENTRIES

The general requirements for making formal entries are set forth in section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), and in part 141 of the U.S. customs regulations (19 CFR 141). The entries must be prepared by an importer, or his agent, and must be accompanied by a number of documents, such as an invoice, a bill of lading, or a carrier's certificate. At the time of entry a

deposit is made of estimated duties due. In order to secure release of the merchandise ascertained), classified (the applicable free or dutiable provisions of the thereafter the goods must be formally appraised (the dutiable value of the merchandise ascertained), (classified the applicable free or dutiable provisions of the law determined), and finally liquidated (the amount of duty due, if any, ascertained). For statistical purposes, the formal entry must show the seven-digit Tariff Schedules of the United States Annotated (TSUSA) reporting number, the countries of origin and exportation of the merchandise, the date of exportation, the quantities, entered and transaction values, and transportation charges.

The procedure for filing informal customs entries is much simplied. The general requirements for making informal entries are provided in section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498), and in sections 143.21 through 143.28, Customs Regulations (19 CFR 143.21-28). The informal entry document is usually completed by the importer (or the customs inspector for the importer) at the place where the imported merchandise is examined and released by the inspector (e.g., pier or airport terminal). Although a deposit of estimated duties due is required, there is no formal appraisement of the goods, few supporting documents are necessary, and the importer, under ordinary circumstances, is not required to obtain a bond for the release of the merchandise. Statistical data for informal entries are required only at the five-digit instead of the seven-digit level of the TSUSA.

COMMENT

The U.S. Department of the Treasury and the U.S. Department of Commerce, it is understood, previously reached an agreement with respect to the informal entry provision of H.R. 8149 whereby Treasury would continue to collect complete statistics on imports valued between $250 and $600. The Commission does not have information presently whether the Treasury Department would collect statistics on that basis for merchandise shipments valued over $250 and not over $600 if this bill were enacted into law.

The need for complete statistics is certainly as necessary today as it was at the time of the previous Commission report of July 20, 1977, on H.R. 8149, as referred to above. With the additional responsibilities of this Commission under the Trade Agreements Act of 1979, the need for adequate statistics on the part of this agency has never been greater.

FISCAL IMPACT OF THE BILL

Enactment of the legislation would undoubtedly effect considerable savings on the part of the Treasury Department since a substantial number of entries would no longer have to be made, verified, classified, and liquidated under the formal entry procedure. The Commission does not have information indicating what the amount of savings to the Government would be.

DEPARTMENT OF COMMERCE

This is in response to your request for the views of this Department on H.R. 7063 "to amend the Tariff Act of 1930 to increase from $250 to $600 the amount for informal entry of goods."

H.R. 7063 would amend section 498(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(1)), to increase the level at which goods may enter the United States under informal entry procedures from $250 to $600. The bill also would provide for submission, as part of any shipper's declaration with respect to merchandise which exceeds $250 in aggregate value, of an accurate statement specifying the types and quantities of all articles imported in each shipment and the aggregate value of each kind of article.

The Department of Commerce opposes H.R. 7063.

The bill appears intended to simplify customs procedures for U.S. importers by expanding the number of entries eligible for informal entry, a procedure which does not require posting of a bond or the services of a customs broker. While the Department sympathizes with this goal, especially as it would affect small businesses, it is seriously concerned with the likely adverse effect on the collection of import statistics. These data are important to the Government's responsibilities for enforcement of orderly marketing agreements and other import relief measures and for administering the textile import programs. The Department believes that enactment of the bill also could adversely affect the

development of import data essential to our trade negotiations where comparisons are made between U.S. import statistics and other countries' export statistics. It could also seriously affect the collecting of data necessary to assess the effects of imports on domestic industry (import impact data).

The United States has import restraint agreements with several countries covering a number of sensitive products. These typically provide that imports of covered products from agreement countries valued over $250 are charged to levels established in the Agreements. Currently, entries below $250 are not processed as formal entries and statistics are not collected on them. Thus, they are not charged to agreement levels. The bill would increase this figure to $600. Our estimate is that, while only 13 percent of all current entries are valued between $250 and $600, nearly 20 percent of entries of articles controlled under restraint agreements are valued between $250 and $600. This percentage figure likely would rise if the informal entry ceiling were raised to $600 since it would permit circumvention. Many firms could split their shipments into entries valued at less than $600. Even at 20 percent of controlled entries, however, the magnitude of potential circumvention of our import restraint agreements and import statistics/monitoring programs would be dramatic.

Accordingly, if the bill were enacted, the Government would have to take steps to assure collection of statistics necessary for the adequate administration of our import restraint and monitoring programs. This would include requiring importers to file documents or information substantially equivalent to current formal entry procedures, though not under bond, and probably would necessitate resort to a Customs broker for entries valued between $250 and $600. While these arrangements could be made through agreement with the Bureau of Customs, the result would be substantially to cancel the beneficial effect of, and defeat the purpose of, the bill.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

DEPARTMENT OF STATE

I have been asked to reply to your request for the views of the Department of State on H.R. 7063, a bill dealing with the rules and regulations for the declaration and entry of merchandise.

The proposed legislation would amend Section 498 of the Tariff Act of 1930 to increase from $250 to $600 the maximum aggregate value of a shipment of merchandise which may, in accordance with the rules prescribed by the Secretary of the Treasury, be entered through informal entry procedures. We understand the proposed amendment is designed to modernize and simplify customs procedures and to assist the United States Customs Service in its effort to decrease the backlog of unappraised and unliquidated formal entries.

The Department of State supports efforts to simplify and modernize customs procedures as such action can make an important contribution to our program of trade liberalization. The adoption of the amendment could, however, have an impact on the collection of statistical data on imports which may be essential in proceedings conducted under various provisions of our trade legislation or programs administered by the other executive agencies and we defer to their views.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

STATEMENT OF THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, MURRAY H. FINLEY, PRESIDENT, AND JACOB SHEINKMAN, SECRETARY-TREASURER

On behalf of our union leadership and members, we appreciate the opportunity to submit our views on H.R. 7063, sponsored by Representative Won Pat, which seeks to increase the dollar value of merchandise eligible for informal entry to $600. Our union represents 502,000 members, the majority of whom produce men's apparel and textile fabrics. We regard this legislation as ill-advised and very damaging to the interests of workers and their jobs in the textile and apparel industries.

Importer groups, in particular, may favor such a statutory change and they may justify it on specious grounds that the action would simplify customs procedures and introduce economies in the administration of such procedures. The ACTWU considers any such extension of the informal entry procedures to shipments up to $600 as not being in the public interest. It would add new administrative complexities in customs enforcement and thus involve additional costs to outweigh possible savings. Of equal concern, it would add to the import injury suffered by the domestic textile and apparel industry.

In the United States the textile and apparel industries are the largest employers in the aggregate of any manufacturing industry, accounting for some 2.3 million jobs in every State. Roughly one out of every eight workers in manufacturing finds his or her livelihood in textile and apparel production. Those industries are extremely labor-intensive and thus are extremely sensitive to the impact of imports.

The situation found by textiles and apparel can be summarized by three simultaneous developments:

Falling production.

Falling domestic employment.

Rising quantities of disruptive imports.

In the dozen years since the Kennedy Round of tariff cuts went into effect, thousands of jobs have been lost due to plant closings and reduced output in the apparel industry. This has happened in the face of an increased market in the U.S. over this period of time. Total employment losses come close to 600,000 jobs.

In men's tailored clothing which includes suits, sport coats and dress slacks, the most labor intensive of all male apparel items, domestic industry output has, according to Commerce Department figures, dropped from 25 million units to 17 million units over the last decade. This has meant a 25 percent decrease from the 115,000 workers who used to be employed by this apparel sector From virtually no imports in the late 1960's now well over one-fifth of the total market for suits is accounted for by imports. The situation is even worse in other sectors. Imports now represent almost one-half of the market in shirts, sweaters, gloves and many other items.

Strong and constant increases in imports is basically a reflection of the fact that the labor cost disparity between U.S. and foreign wage rates has given a great competitive edge to foreign producers. They also are significantly aided by subsidy benefits under their governments' export incentive programs.

Growing import penetration with respect to the textile and apparel industries has occurred notwithstanding the Multi-Fiber Arrangement (MFA) and the bilateral agreements to regulate trade which have been negotiated between the United States and supplying countries. Nonetheless, while the MFA and the bilateral agreements negotiated under it constitute an imperfect mechanism for the regulation of international trade in textiles and apparel, without it there would be no mechanism of any sort to prevent uncontrolled and excessive import surges. It is therefore very much in the national interest to do nothing which would dilute the effectiveness of the MFA and bilateral agreements negotiated under it by the U.S. Indeed the task before this nation is to reinforce and strengthen those agreements.

This is why the Amalgamated Clothing and Textile Workers Union is concerned over any possibility that there could be introduced once again a provision for informal entry procedures for shipments valued up to $600.

Our concerns are based on the following reasons:

Such a statutory change would mean that there would be no formal appraisement of shipments up to a value of $600, instead of $250 as at present. Under such informal entry procedures, a customs official simply accepts without further formality or question the shipping documents and statements made therein covering the shipment with regard to the kinds, quantity, and value of imported articles.

Looser and more flexible customs supervision and control by Customs of shipments entered under informal entry procedures in our view poses greater risks of customs violations with respect to the accuracy of documentation presented by the importer. Of equal concern to our union is that shipments would not be properly recorded in the import statistics collected and tabulated by the Foreign Trade Division of the Bureau of the Census, thus understating import data and undermining the Government's textile and apparel import program.

Under the Multi-Fiber Arrangement and bilateral agreements negotiated by the U.S. Government pertaining to textile and apparel imports, the U.S. Customs Service plays a particularly important role in monitoring the volume and value of textile and apparel imports. Accurate import data must be made available in timely fashion to government officials charged with administering the textile import program and enforcing pertinent restraint levels for controlled countries. We are fearful that this would be hindered were the informal entry procedure expanded to shipments of up to $600.

It should be emphasized that at the present time under the $250 informal entry procedures, shipments up to this value are not recorded in the import statistics or in the controls on imports. Were the limit for informal entry shipments to be revised up to $600, it could have a disastrous impact on low-value imports in the textile and apparel industries, particularly those products whose valuation for duty purposes is governed by Item 807 of Tariff Schedules. Apparel imports such as man-made fiber sport coats, trousers, shirts and outer-coats from Mexico and Colombia all of which are imported under Item 807 would be the greatest beneficiaries of any increased value for shipments eligible for informal entry.

Illustrative of one dramatic example of what could happen should such a provision be enacted is the following:

Imports of men's suits from Colombia have risen rapidly in recent years to the point where they have created major disruption to the domestic men's and boys' tailored clothing industries. The unit export price of a Colombian man-made suit is $30. They are normally packed 18 to a case. Eighteen suits at an average export price of $30 totals $540 which would be less than the limit of $600 proposed in H.R. 7063. Such a revised valuation would permit shipments to enter the United States without being counted against the restraint levels for suits under the U.S.-Colombian Bilateral Agreement. By not recording such imports it would be possible for uncontrolled imports to disrupt the U.S. market without recourse by the U.S. Government, thus defeating the objective of the bilateral agreement. This cannot be permitted to occur.

The Amalgamated Clothing and Textile Workers Union stands ready to support meaningful modernization and simplification of customs procedures but we do not support any measures which would be at the expense of import sensitive industries, such as ours, which face an uphill struggle against low-wage, low-cost foreign production.

There has never been provided any evidence to indicate that extending the informal entry valuation to $600 would provide any advantages to the U.S. Customs Service either in cutting down paperwork or in introducing administrative economies. Rather the evidence is to the contrary; that by increasing the risk of customs violations there would be introduced new problems of customs administration and enforcement of the customs procedures.

For all of the foregoing reasons we earnestly trust that there will be no change in the informal entry limit of $250 as is now embodied in existing statute.

JOINT STATEMENT OF THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL–CIO, MURRY H. FINLEY, PRESIDENT, JACOB SHEINKMAN, SECRETARY-TREASURER AND THE UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL–CIO, WILLIAM H. WYNN, INTERNATIONAL PRESIDENT

SUMMARY

The Amalgamated Clothing and Textile Workers Union, AFL–CIO and the United Food & Commercial Workers International Union, AFL–CIO are opposed to the proposed legislation, H.R. 7063, which would extend coverage of items eligible for informal entry of import shipments currently valued at under $250 to those valued at under $600. An increase in the informal entry level is counter to the long term Government effort to accurately monitor trade trends on a product-by-product basis. An increased level of informal entries will enhance the probability of inaccurate statistical monitoring due to the exclusion from official trade data of an increasing volume of imports.

Domestic shoe workers comprise a portion of both the ACTWU's and UFCW's membership and as such are concerned with import trends in footwear. The footwear industry has historically been recognized as one of the most heavily import-

impacted domestic industries. Its high labor intensity and low capital requirements invite competition from a variety of low-wage foreign sources. We must be concerned with maintaining an accurate statistical source which reflects the true volume of imports entering the United States. We believe that H.R. 7063 would hamper Government efforts to collect import statistics and monitor import trends, both of which are in the best public interest. Those who argue that this legislation would simplify customs procedures are only disregarding the new administrative complexities in customs enforcement which would arise. H.R. 7063 should be opposed.

This statement is being submitted jointly by the Amalgamated Clothing and Textile Workers Union, AFL–CIO (ACTWU) and The United Food & Commercial Workers International Union, AFL–CIO (UFCW) in opposition to H.R. 7063, a bill to amend the Tariff Act of 1930 by increasing, from $250 to $600, the value of goods eligible for informal entry. Domestic shoe workers comprise a portion of each of our Union's membership. These workers face a difficult struggle to maintain jobs in a domestic market which continues to be inundated with imported footwear. Government relief programs such as the negotiated Orderly Marketing Agreements (OMAs) with Korea and Taiwan are not wholly effective in their attempts to curb imports. Nonetheless, any import relief program is dependent upon accurate statistical measures of imports and import trends. Our workers are concerned that this proposed legislation, H.R. 7063, would aggravate industry and Government efforts to maintain a close watch on footwear imports.

Severe import competition has resulted in declining production and employment in the domestic footwear industry for more than a decade. More than 70,000 jobs have been lost and the number of production facilities has fallen by almost one-third since 1967. Since 1968, domestic production has declined almost without interruption, from 642 million pairs in 1968 to 381 million pairs in 1979. Conversely, imports have continued to increase, relentlessly penetrating large portions of the U.S. market. From 182 million pairs in 1968, nonrubber footwear imports increased to record high levels of 374 million pairs in 1978 and 405 million pairs in 1979. Import penetration rose similarly, and by 1979 imports held a majority share of the U.S. market for nonrubber footwear.

The intense degree of injury to the domestic footwear industry was confirmed by two unanimous decisions in "escape clause" cases brought before the U.S. International Trade Commission. The latter decision, in February 1977, led to President Carter's decision to negotiate Orderly Marketing Agreements (OMAs) with Taiwan and Korea, at the time the two major suppliers of footwear to the United States. These OMAs, which have been in effect since June 28, 1977, have alleviated pressure on the U.S. industry from imports from Taiwan and Korea, but have had no effect on stemming the tide of imports from uncontrolled countries or of overall imports. In fact, in 1978 and 1979, despite the OMAs, aggregate imports of nonrubber footwear continued to increase from the 1977 level of 368 million pairs. In 1979, imports were almost 10 percent greater than imports in 1977.

In examining the historical situation of the nonrubber footwear industry, the importance of accurate trade statistics becomes clear. Imports of footwear come from over 80 different supplying countries. Average unit values of imported nonrubber footwear vary widely, from under $1.00 (f.o.b.) per pair in some instances, to over $20.00 (f.o.b.) per pair in other instances. The entrance of new country suppliers, and increased significance of established country suppliers, is a frequent occurrence. High labor intensity and low capital requirements result in relative ease of entry, especially for low-wage countries with surplus labor.

In light of the continued trend in increased nonrubber footwear imports despite the OMAs, both the industry and the Government will continue to monitor imports. Only the most precise and timely statistics can be relied upon to keep an accurate watch on import levels. Accurate and timely trade data are dependent upon official customs documents which are filed with the U.S. Customs Service and relayed to the Bureau of the Census for inclusion in official U.S. Government trade statistics. With large numbers of low priced footwear constantly being imported into the United States, an increase in the dollar amount of merchandise eligible for informal entry could undermine the industry's and the Government's efforts to monitor footwear imports. Footwear priced at $1.00 per pair, or even $5.00 or $10.00 per pair can be shipped in bulk and yet still be eligible for informal entry if the maximum amount is raised to $600.

This industry has fought long and hard for import relief. It cannot afford to see any existing import programs hindered, or in fact undermined, by the unavailability of accurate trade data due to an expansion of informal entry procedures.

Legislation such as that in H.R. 7063 had been suggested in earlier Congresses, but was justifiably defeated. No evidence exists that indicates an expansion of informal entry eligibility to shipments up to $600 would streamline U.S. Customs procedures. We believe that the evidence points toward an increased risk of customs violation and thus new problems in the administration and enforcement of customs procedures. The increased risk of customs violation, combined with the increased difficulty of collecting accurate trade data, cannot be considered in the public interest.

The Amalgamated Clothing and Textile Workers Union and the United Food & Commercial Workers International Union join together to voice their opposition to H.R. 7063. There should be no expansion of coverage in the informal entry procedures.

STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

H.R. 7063—The AFL–CIO has repeatedly opposed increasing the dollar value of imported merchandise eligible for informal entry procedures. We have been assured that the Customs has computer facilities and the expertise to monitor products as they come into the U.S. The use of informal entry could undercut this commitment as well as the effectiveness of many trade laws and agreements. The statistical information on trade would be further undermined. We, therefore, oppose H.R. 7063.

STATEMENT OF ROBERT A. KAPLAN, EXECUTIVE DIRECTOR, CLOTHING MANUFACTURERS ASSOCIATION OF THE UNITED STATES OF AMERICA

SUMMARY

The Clothing Manufacturers Association of the United States of America (CMA) wishes to record its opposition to proposed legislation to increase the maximum value of import shipments eligible for informal entry from $250 to $600.

An expansion of informal entry will hamper the Government's effort to collect accurate trade data, data which our industry depends upon in its own efforts to constantly analyze the competitive situation in the domestic market, and data which the Government needs to monitor controls on textile and apparel imports under the Multifiber Arrangement (MFA).

The men's and boys' tailored clothing industry, which has been characterized by loss of market share to foreign competition, is convinced that an expansion of informal entry procedures will result in an increased number of import shipments which will not be controlled under the MFA and will not get properly categorized or counted in official import statistics. Accurate trade data are essential to the proper operation of the Multifiber Arrangement. Imports that go unaccounted for could undermine the intent of the MFA and result in further injury to an industry which has already suffered from growing levels of imports.

H.R. 7063 could have negative consequences on the operation of the MFA and on the viability of import sensitive industries such as the men's and boys' tailored clothing industry. The CMA opposes this legislation.

STATEMENT

The Clothing Manufacturers Association of the United States of America (CMA) is the national organization of the men's and boys' tailored clothing industry of the United States. Members of the CMA are located throughout the nation and produce the vast majority of the men's and boys' tailored clothing made in this country. The Association acts as the official spokesman for the men's and boys' tailored clothing industry before all Government agencies, and since its inception in 1933, it has been the official collective bargaining representative of the manufacturers with the Amalgamated Clothing and Textile Workers Union.

The CMA wishes to record its opposition to H.R. 7063, a bill to increase the maximum value of import shipments eligible for informal entry from $250 and $600. The men's and boys' tailored clothing industry, like most segments of the textile and apparel industry sector, is sensitive to imports, and particularly to imports from low-wage developing countries. The industry relies upon the Multifiber Arrangement (MFA) to alleviate some of the import pressure on the textile

and apparel industries. While the MFA may not be a wholly satisfactory mechanism for import restraint, it is, nonetheless, the only import program now in effect for this industry.

The MFA requires a spohisticated monitoring system by which textile and apparel imports are charged against maximum allowable levels of imports from certain countries. The procedure for monitoring imports requires precise customs documentation as to the kinds, quantity, and value of imported articles. Even under current statutes, however, some apparel items from some countries, despite inclusion in the MFA can be imported into the United States under informal entry procedures if the total value of the shipment does not exceed $250. There are already an indeterminate number of apparel items which do not get charged against negotiated quotas due to informal entry. It is clear that an increase in the maximum informal entry level from $250 to $600 will result in a considerably larger number of import shipments which will not be counted against negotiated MFA levels. This will not only hinder the operation of the MFA, but will also injure the industry's ability to monitor its competitive position in the U.S. market. Accurate trade data are a major priority for all import-sensitive industries in their efforts to analyze the economic impact of imports on the domestic market.

The men's and boys' tailored clothing industry has been characterized by plant shutdowns, declining domestic production, and declining domestic employment, all as a result of increasing quantities of imports. The number of plants in the industry producing men's and boys' suits and coats declined by almost one-third between 1967 and 1977. Similarly, employment in the suit and coat industry has steadily declined, from 136,000 workers in 1967 to just 99,000 workers in 1977. Domestic production of men's and boys' suits (excluding leisure suits) fell from 24.5 million units in 1967 to 20.9 million units in 1977; domestic production of sport coats fell from 17.5 million units to 16.5 million units during the same period. Trouser production declined 24 percent, from 202.1 million pairs in 1967 to 153.9 million pairs in 1977. Domestic cuttings of men's suits and sport coats fell further by 17 percent and 4 percent, respectively, between 1977 and 1979.

Imports have increased substantially, and a greater portion of the domestic market for men's and boys' tailored clothing is being captured by imports. Over one-fifth of the U.S. market for suits, and over one-third of the U.S. market for sport coats and trousers is held by imports. Competition from low-wage foreign suppliers continues to erode domestic market share.

The Association's concern over the pending legislation is self-evident. A concern with regard to import levels dictates a concern with regard to accurate trade statistics. Fair and equitable administration of the MFA depends upon accurate trade data. An increase in the maximum value of merchandise eligible for informal entry will make proper administration of this important program exceedingly difficult. Many imported items affecting the men's and boys' tailored clothing industry have relatively low average unit values. As such, the inducement to ship in smaller lots to avoid formal U.S. Customs procedures becomes greater as the level of informal entry is expanded. Moreover, aggregate import levels could become increasingly understated if shipments under $600 are not included in Census data.

There are many examples of items of imported tailored clothing which are of low unit value and which therefore could take advantage of informal entry procedures. For instance, imports of men's suits from Colombia, which have increased rapidly in recent years and are a cause of major disruption to the tailored clothing industry, were at an average unit value of just $36 in 1979. Imports of these Colombian men's and boys' suits, packed up to 16 suits in a case, could enter the United States under informal entry procedures if legislation raising the limit to $600 is approved. Shipments such as these would go uncounted against U.S.-Colombian bilateral restraint levels. Uncontrolled imports could disrupt the U.S. market without recourse by the U.S. Government.

The Clothing Manufacturers Association of the United States of America urges this Subcommittee to carefully consider the negative consequences that passage of H.R. 7063 could have on the operation of the Multifiber Arrangement and on the viability of the domestic textile and apparel industry, and other import-sensitive sectors. We believe that the evidence justifies opposition to this legislation.

STATEMENT OF THE INTERNATIONAL LEATHER GOODS, PLASTIC, AND NOVELTY WORKERS' UNION, AFL–CIO, FRANK CASALE, GENERAL PRESIDENT

SUMMARY

The International Leather Goods, Plastic and Novelty Workers' Union, AFL–CIO, is opposed to H.R. 7063, which would amend the Tariff Act of 1930 to increase the value of imported articles eligible for informal customs entry from $250 to $600.

The domestic handbbag industry is suffering serious injury as the result of imports from low-wage foreign countries which are steadily absorbing a greater proportion of the domestic market. Statistical monitoring of imports, in an accurate and timely manner, is essential to our ongoing effort to assess the economic impact of imports on the domestic market. Under expanded informal entry procedures, an increased volume of handbags simply could not be properly monitored or recorded in the statistics. This would result in understating actual handbag imports in the official statistics, both in terms of volume and value. We strongly urge that this Subcommittee reject H.R. 7063.

STATEMENT

The International Leather Goods, Plastics, and Novelty Workers' Union, representative of workers in the U.S. handbag industry, wishes to record its opposition to H.R. 7063, proposed legislation to amend the Tariff Act of 1930 to increase the dollar value of merchandise eligible for informal customs entry from the present maximum of $250 to $600. Legislation such as this has been offered several times in the last few years but has never passed, for good reason. Once again, we urge the Congress not to pass this bill.

Our Union is concerned that a statutory revision which increases the value of imported articles eligible for informal entry would increase the risk of a significant understatement of aggregate imports. The Bureau of the Census of the Department of Commerce relies upon official customs entry documents of the U.S. Customs Service to tabulate official import data. An increase in uncounted imports—i.e., those which enter under the informal entry procedure—would skew the official trade statistics, as the real volume of imports is understated. Accurate and timely import trade data is a vital concern of the domestic handbag industry, which faces an ongoing battle to compete with large volumes of imported handbags.

Few U.S. industries have been as negatively affected by import competition as has the U.S. handbag industry. Since 1967, the industry has been characterized by increasing imports causing declining production and declining employment. The industry has experienced a loss of over one-fifth of all manufacturing plants and the elimination of thousands of jobs, despite modest growth in U.S. market demand for handbags.

Imports of handbags, largely from low-wage foreign countries, have captured a significant share of the U.S. market for handbags, as import penetration, in terms of value, rose from 13 percent in 1967 to almost 40 percent in 1979. In terms of quality, this market takeover is even more alarming, as import penetration has grown from 29 percent in 1967 to 65 percent in 1979. These increasing volumes of imports are an ongoing concern of workers in this labor-intensive industry, many of whom are ethnic minorities or women. Domestic production of handbags has declined from 97 million units and 105 million units in 1967 and 1968, respectively, to just over 69 million units by 1979. This industry has sought relief on numerous occasions, through countervailing duty petitions and adjustment assistance.

Precise monitoring of import trade with respect to handbags from all countries is of crucial importance to this industry in its efforts to counter import injury. In 1979, imports of handbags of all types had an f.o.b. average unit value of just $2.49. If informal entry procedures were to apply to shipments up to $600 value, it could mean that one shipment containing as many as 240 or 20 dozen handbags (at an average unit value of $2.49) could go unrecorded in U.S. import statistics. Shipments of high volume, low-unit value, items could combine to cause major inaccuracies in Commerce Department data, as informal entries are excluded from trade data collection. An increase in the ceiling for informal entry from $250 to $600 could result in a substantial increase in inaccuracies already inherent in import data collection. It is our view that all imports should be counted,

and an accurate statistical base is essential to monitoring imports. Precise and comprehensive information, on a current basis, on all handbags from all sources is required irrespective of the value of shipments concerned.

Beyond our own concerns for accurate and timely compilation of official data on handbag imports, the Union believes that elimination of direct appraisement by the U.S. Customs Service for shipments under $600 is not in the interest of other import-sensitive sectors nor in fact in the public interest. An increase in the ceiling for informal entries could result in more instances of deliberate evasion of duties through false or inaccurate shipping documents. As we understand it, under informal entry procedures, the customs officer simply releases the articles to the importer with payment of duty based on the shipping documents and statements to the U.S. Custom Service furnished therein, and generally without further individual investigation of the kinds, quantities and values of articles in the shipment.

In our view, neither the interest of the U.S. Government and certainly not that of an import-sensitive industry like the handbag industry would be served by legislation such as H.R. 7063, which increases the informal entry provision to a $600 limit.

STATEMENT OF THE WORK GLOVE MANUFACTURERS ASSOCIATION, PAUL G. SCHULZ, EXECUTIVE DIRECTOR

SUMMARY

The Work Glove Manufacturers Association is opposed to the legislation embodied in H.R. 7063, which would increase the maximum value of imports eligible for informal entry procedures from the current level of $250 to $600. An increased volume of imports likely to be eligible for informal entry, will result in a substantial understatement in official Government trade statistics.

Legislation such as that proposed in H.R. 7063 would undermine the enforcement of the Government's textile and apparel import program as well as undermine the accurate statistical compilation of other trade data by the U.S. Department of Commerce. Many import-sensitive U.S. industries, among them the U.S. work glove industry, must rely upon Government data sources in their efforts to fight import competition through an ongoing analysis of the effect of foreign imports on domestic competition. The WGMA urges that H.R. 7063 not be reported favorably by this Subcommittee.

STATEMENT

The Work Glove Manufacturers Association (WGMA), a trade association representing the majority of U.S. work glove producers, is strongly opposed to H.R. 7063, a bill to amend the Tariff Act of 1930 to increase the maximum dollar value of imported merchandise allowed to enter the United States under informal entry procedures from $250 to $600.

The WGMA's concern regarding the pending legislation is a concern that is surely felt by other import-sensitive sectors, and especially by industries, such as the work glove industry, which face mounting competition in low unit-value items from low wage foreign sources. In evaluating the effects of imports on an industry, domestic industries must necessarily depend upon Government sources for accurate and timely statistical compilations of data. The proposed legislation would undermine the Government's textile and apparel import program (embodied in the Multifiber Arrangement), as well as the ability of the Government to compile accurate trade statistics on other industry sectors. In the case of trade data, the Bureau of the Census of the U.S. Department of Commerce is charged with compiling import statistics based on official documents of the U.S. Customs Service. While informal entry items are accounted for in statistics reflecting the overall U.S. trade balance, an increase from $250 to $600 in the value of shipments eligible for informal entry can only result in an increased understatement of the volume of U.S. imports by type. Only some items under quota are exempt from informal entry; many imported items, even though they are subject to quota, can enter under informal entry procedures. An accurate statement of imports in an individual industry sector can be crucial in an industry's efforts to analyze the effects of import competition.

The U.S. work glove industry is part of both the apparel and leather industry sectors; the majority of work gloves are produced from either cotton fabric or leather. The work glove industry has clearly felt the impact of increasing imports

in recent years. Although cotton work gloves are covered under the Multifiber Arrangement (MFA), leather and partial leather gloves do not benefit from any import restraints. Imports of work gloves have captured virtually all of the growth in U.S. demand for work gloves over the past ten years.

Imports of cotton work gloves increased from under one million dozen pairs in 1970 to over 10 million dozen pairs in 1979. Imports of cotton work gloves, in relation to domestic shipments, increased from 4 percent in 1970 to 46 percent in 1979. These rapid increases in imports and import penetration occurred despite the inclusion of cotton gloves under the MFA.

Although the import share of the market has risen in every work glove category, the leather segment of the work glove industry has historically experienced the most intense import pressure. Production of all types of work gloves is labor intensive, but the production processes unique to leather glove production are even more labor intensive. Thus, foreign country suppliers with relatively low wages are able to compete very effectively. Domestic shipments of leather work gloves fell from 4.2 million dozen pairs in 1970 to 3.8 million dozen pairs in 1979, while imports rose from 0.5 million dozen pairs to 3.6 million dozen pairs. The import share of the leather glove market increased from 11 percent in 1970 to 48 percent in 1979.

Despite the competitive efforts of the U.S. work glove industry, imports continue to present a significant problem to the domestic industry. This past year found the overall import share of the U.S. market at almost one-third. As domestic producers continue their ongoing battle to compete, accurate statistical compilations regarding import levels are vital.

As a trade association, the WGMA offers many services to its members. Among these services, one which we regard as very important, is a statistical monitoring of production and shipments by domestic producers, and import levels. We can control, to the best of our ability, the accuracy of domestic production reports. But we must rely upon the data collected by the U.S. Department of Commerce to reflect import levels. This data must be as accurate as possible.

Imported work gloves have a relatively low average unit value. In 1979, the average unit value (f.o.b.) of imports of all types of work gloves was slightly over $5.00 per dozen pairs, while cotton work gloves had an average value of only $2.67. Thus, if the ceiling on informal entries is raised to $600, import shipments containing a significant number of pairs of gloves could slip in "uncounted" by the Bureau of the Census. For cotton gloves and other such products included in the Multifiber Arrangement, an increased level of informal entries could undermine the textile and apparel import program of the Government, on which we must depend as an ongoing import relief mechanism. The program cannot be administered or enforced properly without precise and accurate import data. We are fearful that proper administration of the textile and apparel import program will be hindered by any expansion of goods eligible for informal entry. All imports must be counted against negotiated restraint levels.

For other types of work gloves, and other products not covered by any restraint programs, an increase in the maximum value of informal entries could be equally harmful. Too many shipments of low unit value items would not be included in official Census import data, thus understating the aggregate quantity and value of import trade for many industries.

The WGMA urges the Subcommittee not to report favorably on H.R. 7063, a bill which would be a further setback to the struggle of domestic industries in their efforts to counter import competition.

H.R. 7087

To increase the column 2 rate of duty (applicable to products of Communist countries) on anhydrous ammonia to 15 per centum ad valorem.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 7087, if enacted, would increase the column 2 rate of duty applicable to imports of anhydrous ammonia[1] from "free" to 15 percent ad valorem. The column 2 rate of duty is applicable to imports from countries which are not eligible for most-favored-nation (MFN) or column 1 rates of duty. The principal column 2 exporter of anhydrous ammonia to the United States is the U.S.S.R. The sponsor introduced this legislation in an effort to:

"* * * halt the expansion of Soviet imports of anhydrous ammonia into the American market. * * * [The bill] is designed to curtail Soviet imports, and thus our dependence on a potentially unreliable supplier, without creating unnecessary disruptions in total amounts available."[2]

DESCRIPTION AND USES

In this memorandum the terms "anhydrous ammonia" and "ammonia" are used synonymously. The term "anhydrous," which means without water, is often used by the industry to distinguish pure ammonia, NH^3, from aqua ammonia, $NH^3.H^2O$, which is a solution of ammonia dissolved in water. By weight, ammonia is 82 percent nitrogen and 18 percent hydrogen.

Ammonia is one of the most basic commercially produced chemicals in the world. It is used as a major end product and as an intermediate in the production of more complex chemicals. Virtually all commercially fixed nitrogen (chemically combined) is derived from ammonia.

Nearly 75 percent of the ammonia consumed in the United States is used as fertilizer. Ammonia can be applied directly to farmland or it can be upgraded into other fertilizers. In addition, ammonia is used in the production of explosives and blasting agents, livestock feeds, fibers, plastics, resins, and elastomers. U.S. consumption of ammonia, by end uses, is shown in table 1.

At normal atmospheric temperatures and pressures, ammonia is a colorless gas with a sharp, intensely irritating odor. Ammonia is toxic and hazardous; inhalation of concentrated fumes can be fatal. In addition, ammonia is a moderate fire hazard.

Ammonia gas can be easily liquefied by increasing the pressure or decreasing the temperature. The industry has found that ammonia in liquid form is easiest to ship or store. Consequently, rail tank cars, tractor trailers, pipelines, ocean-going vessels, and storage tanks have been specially designed to handle liquefied ammonia.

Modern ammonia plants produce one grade of ammonia. Most ammonia is sold with a guaranteed purity of 99.5 percent. When used for refrigeration and metallurgy, however, ammonia must possess a purity of 99.98 percent and 99.99 percent, respectively. Extra precautions may be required in handling ammonia for these special end uses to prevent contamination.

TARIFF TREATMENT

Virtually all ammonia imported into the United States including the imports of ammonia from the U.S.S.R., enters under item 480.65 of the TSUS. Anhydrous ammonia of a grade used chiefly for fertilizer or chiefly as an ingredient in the

[1] The Commission has recently concluded two comprehensive investigations encompassing the commodity which is the subject of this memorandum: Anhydrous Ammonia from the U.S.S.R., Investigation No. TA-406-5, USTIC Pub. No. 1006 (October 1979); and id., Investigation No. TA-406-6, USITC Pub. No. 1051 (April 1980).

[2] 126 Cong. Rec. E2050; April 24, 1980 (remarks of Rep. Frenzel).

manufacture of fertilizer is entered duty free under this item. According to a customs classification ruling in 1970, ammonia with a minimum purity of 99.5 percent by weight is chiefly used as a fertilizer or chiefly used as an ingredient in the manufacture of fertilizer. Since modern ammonia plants produce only one grade of ammonia, which is at least 99.5 percent pure, according to this ruling, all ammonia should enter under the duty free TSUS item.

Small quantities of ammonia, however, enter under TSUS item 417.22, under which ammonia for other end uses was originally classified. In view of the customs ruling mentioned above, these imports appear to be misclassified. The most-favored-nation (MFN) rate of duty applicable to this item is 6.4 percent ad valorem, the concession rate for least developed developing countries (LDDC's) is 2.8 percent ad valorem, and the column 2 rate of duty is 28 percent ad valorem. Imports under this item from designated beneficiary developing countries are eligible for duty-free treatment under the Generalized System of Preferences (GSP).[3] When the final stage of concessions on this item granted in the Tokyo round of trade negotiations becomes effective in 1987, the application MFN rate will be 2.8 percent ad valorem.

STRUCTURE OF THE DOMESTIC INDUSTRY

In 1979, the U.S. domestic ammonia industry comprised 51 companies, operating ammonia plants at 79 locations, with a total operating design capacity of 20.4 million short tons per year. The domestic producers range from small chemical or fertilizer companies to large integrated multinational oil and chemical corporations, with some of the largest ammonia producer being farmers' cooperative.

Most domestic ammonia plants are located in those States which have large supplies of natural gas. In 1979, 31 percent of the ammonia productive capacity was located in Louisiana, 10 percent, in Texas, and 11 percent, in Oklahoma.

More than 50 percent of the ammonia produced in the United States is used by the ammonia producers for further processing into more advanced products, primarily fertilizers. According to a 1977 report prepared by the U.S. Department of Agriculture, 61 percent of the U.S. ammonia producers, accounting for 79 percent of U.S. production capacity, owned 88 percent of the U.S. capacity for processing ammonia into more advanced products in 1977, as shown in table 2.

Industrial consumers of ammonia purchase large quantities of ammonia on a continuous long-term basis, while the fertilizer market for direct-application ammonia is seasonal in nature. Industrial consumers include fertilizer producers that use ammonia in the production of urea, ammonium nitrate, ammonia phosphates, ammonium sulfate, and other chemical fertilizers. Other industrial consumers include chemical plants that purchase ammonia to produce chemicals other than fertilizers.

The efficiency requirement that most ammonia plants operate continuously at near capacity must be balanced against the seasonal nature of the fertilizer market which is the principal end-use market for ammonia. The situation is further complicated by the physical-chemical properties of ammonia that require it to be stored and transported as a refrigerated liquid at —280° psi (pounds per square inch), or about 17 times atmospheric pressure. Storage facilities for ammonia are expensive to construct and maintain and are, therefore, limited to a maximum of a few months production.

U.S. CAPACITY, PRODUCTION, AND CONSUMPTION

U.S. ammonia production capacity increased irregularly from 17.4 million short tons in 1973 to a projected 20.8 million short tons in 1980, representing an increase of 20 percent in 7 years. Capacity decreased slightly from 17.4 million short tons in 1973 to 17.2 million short tons in 1974, and subsequently increased steadily to 22.0 million short tons in 1978. U.S. capacity is expected to decrease by 5 percent to 20.8 million short tons in 1980.

U.S. production of ammonia increased steadily from 15.2 million short tons in 1973 to 17.6 million short tons in 1977, or by 16 percent in 4 years. U.S. production decreased by 4 percent to 17.0 million short tons in 1978. A recordbreaking quantity of 18.1 million short tons was produced in 1979, representing an increase of 6 percent over the previous year (table 3). Producers reduced production in 1978, in part, to draw down large inventory accumulation.

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[3] Imports under item 417.22 from Mexico are not eligible for duty-free treatment under the GSP.

Utilization of U.S. productive capacity decreased steadily from 91 percent in 1974 to 77 percent in 1978 and then increased to 89 percent in 1979. The capacity utilization rate of 91 percent, experienced in 1974 is, according to industry sources, the highest production rate that could have been attained in that year. With the replacement of small reciprocating plants with large modern plants the maximum capacity utilization rate approaches 95 percent. In 1974 and 1975 prices increased dramatically; U.S. plants were producing as much ammonia as possible to meet the demand. Utilization of effective capacity decreased during 1974–78.

U.S. consumption of ammonia increased steadily from 16.1 million short tons in 1974 to an estimated 19.5 million short tons in 1979, or by 21 percent (table 4). U.S. producers' share of U.S. consumption decreased irregularly from 97 percent in 1974 to 90 percent in 1979.

U.S. IMPORTS

U.S. imports of ammonia from all countries quadrupled from less than 0.5 million short tons in 1974 to 2.0 million short tons in 1979. In 1979 the U.S.S.R. accounted for 40 percent of the imports, followed by Canada, Trinidad, and Mexico, as shown in the following tabulation:

Source:	*Percent of total imports*
U.S.S.R.	40
Canada	27
Trinidad	17
Mexico	16
Total	100

Imports of ammonia from each of these countries have increased sharply since 1974. Imports from the U.S.S.R. increased from none in 1977 to 315,000 short tons in 1978 and to 777,000 short tons in 1979 (table 5).

The ratios of imports of ammonia from all countries and from the U.S.S.R. to apparent U.S. consumption during 1974–79 are shown in table 6.

POTENTIAL GAIN IN REVENUE

Based upon official U.S. Department of Commerce statistics, 777,000 short tons of anhydrous ammonia valued at $56.5 million were imported from the U.S.S.R. in 1979. Application of a 15 percent ad valorem duty to these imports would have resulted in a revenue gain of $8.5 million in 1979. Imports of anhydrous ammonia in 1980 were expected to be roughly double, in quantity, 1979 import levels. If the unit value of imported ammonia in 1980 were equal to or greater than the 1979 unit value, the potential gain in revenue could exceed $17 million on an annualized basis. However, if the U.S.S.R. discontinued shipments of anhydrous ammonia to the United States or shipments to the United States are disrupted for other reasons, there would be no gain in revenue.

TECHNICAL COMMENTS

There is a typographical error in the proposed new item number for anhydrous ammonia. The number should be 480.66 rather than 430.66.

The bill as presently drafted would increase the column 2 rate of duty for fertilizer grades of ammonium nitrate, ammonium nitrate-lime-stone mixtures, ammonium sulfate, nitrogen solutions, and other nitrogenous fertilizer substances (in addition to anhydrous ammonia) from "Free" to 15 percent ad valorem. This is inconsistent with the stated purpose of the legislation. Accordingly, we assume that the intended column 2 rate for item 480.67 should be "Free".

TABLE 1.—*Anhydrous ammonia: Percentage distribution of U.S. consumption, by end uses, 1975*

End use	*Percent*
Fertilizers:	
Ammonia, direct application	29. 1
Ammonium nitrate	18. 1
Urea	12. 5
Ammonium phosphates	7. 5
Ammonium sulfate	3. 7
All other (nitrogen solutions, etc.)	2. 8
Total	73. 7
Explosives and blasting agents:	
Commercial	3. 6
Military	. 2
Total	3. 8
Livestock feeds	3. 8
Fibers, plastics, resins, and elastomers	6. 1
Miscellaneous	12. 6
Grand total	100. 0

SOURCE: Copyright permission granted by Stanford Research Institute, "Chemicals Economics Handbook," April 1977.

TABLE 2.—VERTICAL INTEGRATION OF U.S. ANHYDROUS AMMONIA FIRMS, 1975-77

[In percent]

Item	1975	1976	1977
Ammonia-producing firms owning 1 or more plants for processing ammonia into more advanced products [1]	76	71	61
U.S. ammonia-producing capacity owned by those firms producing more advanced products [2]	91	81	79
U.S. capacity for processing ammonia into more advanced products owned by ammonia-producing firms	92	89	88

[1] Including ammonium nitrate, ammonium phosphates, and urea.
[2] In terms of 100 percent nitrogen equivalents.

Source: Compiled from official statistics of the U.S. Department of Agriculture.

TABLE 3.—ANHYDROUS AMMONIA: U.S. PRODUCTION CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION 1973-80

Year	Capacity (1,000 short tons)	Production (1,000 short tons)	Capacity utilization (percent)
1973	17, 372	15, 208	88
1974	17, 220	15, 733	91
1975	18, 391	16, 419	89
1976	19, 033	16, 716	88
1977	21, 555	17, 576	82
1978	22, 027	16, 967	77
1979	20, 367	18, 057	89
1980	20, 765		

Source: The Tennessee Valley Authority, and official statistics of the U.S. Department of Commerce.

TABLE 4.—ANHYDROUS AMMONIA: U.S. PRODUCERS' DOMESTIC SHIPMENTS AND INTRACOMPANY TRANSFERS, IMPORTS, AND APPARENT CONSUMPTION, 1974-79

[Transactions in thousand short tons]

Period	Producers'— Domestic shipments	Producers'— Intracompany transfers	Producers'— Total	Imports	Apparent consumption	Ratio of total domestic shipments and intracompany transfers to apparent consumption (percent)
1974	6,064	9,580	15,644	457	16,101	97
1975	6,653	8,968	15,621	808	16,429	95
1976	6,837	9,567	16,404	730	17,134	96
1977	7,351	9,424	16,775	1,078	17,853	94
1978	(1)	(1)	[2] 16,823	1,516	18,339	92
1979	(1)	(1)	[2] 17,592	1,951	19,543	90

[1] Not available.
[2] Estimated by the U.S. International Trade Commission, U.S. production with adjustments for exports and inventory changes.

Note.—Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

TABLE 5.—ANHYDROUS AMMONIA: U.S. IMPORTS FOR CONSUMPTION, BY PRINCIPAL SOURCES, 1974-79

Source	1974	1975	1976	1977	1978	1979
Quantity (thousand short tons):						
U.S.S.R.	0	0	18	0	[1] 315	[2] 777
Canada	93	118	254	632	517	533
Mexico	2	7	21	56	349	309
Netherlands Antilles	49	107	78	34	38	0
Trinidad	125	148	192	171	276	332
Venezuela	67	54	54	27	0	0
All other	121	374	112	158	21	0
Total	457	808	730	1,078	1,516	1,951
Value (thousands of dollars):						
U.S.S.R.	----------	----------	945	----------	[1] 27,760	56,466
Canada	10,261	20,676	30,593	67,724	50,879	51,115
Mexico	482	1,536	787	3,551	24,698	25,523
Netherlands Antilles	2,859	12,417	9,465	3,339	4,310	----------
Trinidad	5,423	9,359	13,301	11,917	23,979	33,024
Venezuela	13,049	6,652	4,305	2,206	----------	----------
All other	20,301	73,524	11,456	14,553	1,687	----------
Total	52,375	124,164	70,852	103,290	133,513	166,128
Unit value (per short ton):						
U.S.S.R.	----------	----------	$53	----------	[1] $88	$73
Canada	$110	$175	120	$107	98	96
Mexico	241	219	37	63	71	83
Netherlands Antilles	58	116	121	98	113	----------
Trinidad	43	63	69	70	87	99
Venezuela	195	123	80	82	----------	----------
All other	168	197	102	92	80	----------
Average	115	154	97	96	88	85

[1] Includes 10,000 short tons of ammonia imported from the U.S.S.R. through Finland.
[2] According to testimony presented at the hearing, Occidental's records show it imported 832,000 short tons of ammonia in 1979.

Note.—Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

TABLE 6.—ANHYDROUS AMMONIA: RATIOS OF U.S. IMPORTS FROM ALL SOURCES AND FROM THE U.S.S.R. TO APPARENT U.S. CONSUMPTION, 1974-79

[In percent]

Year	Imports from—	
	All sources	U.S.S.R.
1974	3	0
1975	5	0
1976	4	(1)
1977	6	0
1978	8	2
1979	10	4

[1] Less than 0.5 percent.

Source: Compiled from official statistics of the U.S. Department of Commerce.

TABLE 7.—ANHYDROUS AMMONIA EQUIVALENTS: U.S. IMPORTS AND EXPORTS OF CHEMICALS AND FERTILIZERS CONTAINING FIXED NITROGEN, 1974-78[1]

[In thousands of short tons]

Year	Imports	Exports	Net imports
1974	1,403	1,215	188
1975	1,576	1,502	74
1976	1,719	1,554	165
1977	2,491	1,643	848
1978[2]	2,979	2,711	268

[1] 1979 figures not available.
[2] Preliminary figures.

Source: Compiled from official statistics of the U.S. Bureau of Mines.

DEPARTMENT OF STATE

I have been asked to reply to your request for the views of the Department of State on H.R. 7087, a bill to impose a duty of 15 percent ad valorem on imports of anhydrous ammonia from countries not accorded most favored nation treatment.

The Administration has recently given attention to United States policy with respect to imports of anhydrous ammonia from the USSR. On January 18, 1980, concurrently with the imposition of a quota, the President requested the United States International Trade Commission to determine the effect of imports from the USSR on the United States market under Section 406(c) of the Trade Act of 1974. The Commission reported on April 11 that market disruption does not exist with respect to imports of anhydrous ammonia from the USSR nor is there a threat of market disruption from such imports. A finding having been made pursuant to procedures prescribed by the Congress that imports are not causing or threatening disruption, legislative action to impose a duty of 15 percent ad valorem does not appear warranted. The Department of State, therefore, recommends against enactment of the proposed legislation.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF AGRICULTURE

This is in response to your request for this Department's views on H.R. 7087, a bill "To increase the column 2 rate of duty (applicable to products of Communist countries) on anhydrous ammonia to 15 per centum ad valorem." The Department does not support the proposed bill.

H.R. 7087 would amend part 11 of schedule 4 of the Tariff Schedules of the United States (19 USC 1202). Currently, the column 2 rate for anhydrous ammonia and other nitrogenous fertilizer and fertilizer materials is zero. H.R. 7087 would increase the duty rate to 15 percent. Column 2 rates apply to countries to whom we have not extended most favored nation status. It is noted that the bill would impose a duty on imports of other nitrogen fertilizers in addition to anhydrous ammonia. Such a duty could restrain the importation of unspecified nitrogenous fertilizers which might be in short supply in the future.

Imports of nitrogen in 1979–80 are forecast at 16 percent of total domestic use, or about a fifth of the level agricultural consumption. Anhydrous ammonia is the leading nitrogenous fertilizer material imported by the United States. Nitrogen exports are expected to equal or exceed imports. Ammonia exports are attracted by higher prices in the European market.

Most U.S. anhydrous ammonia imports originate from four sources; consequently, if imports were restrained from one source, increased demand upon other sources would exert an upward pressure on prices.

Enactment of this legislation would increase input costs to the farmer and ultimately increase food costs to the consumer. While we estimate that the use of phosphate and potash fertilizers will be down this year, nitrogen usage may hold at about the same rate as last year. Farmers' nitrogen fertilizer prices have increased about 30 percent since March 1979. Over the next several years, fertilizer usage is expected to expand. Given these circumstances, raising the price of fertilizer imports would raise the price of farm inputs and could jeopardize the competitive stance of U.S. agricultural products in the world market.

Currently, there are no duties on imports of any types of fertilizer. Hence, enactment of this bill would set a precedent for restricting fertilizer trade.

Enactment of this bill would not involve any additional costs to the Government. The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

H.R. 7087 would increase the rate of duty on anhydrous ammonia to 15 per centum ad valorem. The AFL–CIO has indicated to the ITC that the major problem of imports of anhydrous ammonia depend on non-market trade and an increase in tariffs would not be the most successful way of controlling the impact of a buy-back arrangement. (The contract between the Soviet Union and Occidental Petroleum Corporation is a buy-back arrangement.) Rather, the AFL–CIO recommended quantitative limitations.

However, the AFL–CIO supports the intent of H.R. 7087, which is to assure that the U.S. does not become dependent on the Soviet Union for supplies of anhydrous ammonia. This is essential to the well-being of U.S. agriculture and the U.S. food supply.

KAISER AGRICULTURAL CHEMICALS,
Savannah, Ga., May 15, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On Thursday, May 8, 1980, your Subcommittee held hearings on H.R. 7087 which would impose a 15 percent ad valorem duty on anhydrous ammonia imported from Communist countries. I would like to take this opportunity to express our strong opposition to enactment of this legisla-

tion. We firmly believe that there is no justification for this kind of protectionist legislation and that its enactment would not only result in severe hardships for companies such as ours, but would also be contrary to the national interest.

Kaiser Agricultural Chemicals Division of Kaiser Aluminum & Chemical Sales, Inc. operates three nitrogen upgrading facilities located in Savannah, Georgia; Bainbridge, Georgia; and Tampa, Florida which utilize anhydrous ammonia as a basic raw material. These three plants are currently producing approximately 550,000 tons of ammonia nitrate and direct application solutions which are marketed in Georgia, South Carolina, North Carolina, Alabama and Florida.

Kaiser Agricultural Chemicals has entered into a 10-year supply contract effective January 1, 1979, with Occidental Petroleum to purchase anhydrous ammonia imported from the USSR at Occidental's terminal adjacent to our Savannah plant. Approximately 50 percent of the anhydrous ammonia requirements for the Savannah facility are being supplied under this contract. Storage facilities at the Savannah plant are limited. However, adequate rail transportation facilities are available to supply the plant from the Occidental terminal. Under the terms of our contract with Occidental any import duties are for our account. Therefore, in the event that a 15 percent duty is assessed on imports of ammonia from the USSR, we will have no alternative but to pass the duty on to our customers in the form of higher prices. Any increase in fertilizer prices will obviously be inflationary and will be passed on to consumers in the form of higher food prices.

In the event that deliveries of ammonia from the USSR are curtailed as a result of quotas or other import restrictions, it is likely that we would be forced to curtail, or even halt, production at one or more of our manufacturing facilities. We do not have storage or unloading facilities that would permit us to bring in ammonia by ocean freight from either domestic or other foreign sources. Moreover, rail tank cars would not likely be available in sufficient numbers to supply our Savannah facility by rail from other domestic producers. Even if adequate rail transportation were available, the high cost of rail transportation when coupled with high spot prices for ammonia would likely make our Savannah operations noncompetitive.

Prices for anhydrous ammonia and the prices paid by farmers for anhydrous ammonia and nitrogen-based fertilizers have risen sharply since the beginning of 1979. Higher prices for natural gas will likely cause these prices to continue to rise. Domestic supplies of ammonia are expected to remain tight. Imposition of a duty, or a curtailment of imports from the USSR, would simply add to existing inflationary pressures.

It is our understanding that there was no testimony offered at the May 8 hearing in direct support of the imposition of an ad valorem duty on Russian anhydrous ammonia. Instead, representatives of the Domestic Nitrogen Producers Ad Hoc Committee testified that they preferred the imposition of import quotas for at least five years. Any such restriction would result in significant inflationary price increases and should be rejected for the same reasons that an ad valorem duty would not be in the public interest.

We have reviewed the written testimony given on May 8 and believe that several points are apparent:

After a thorough investigation, the International Trade Commission recently found that the domestic industry is neither impaired nor threatened with injury by USSR imports.

A market disruption in the domestic industry does not exist and will not develop in the future. Imports of Russian ammonia contituted only 4 percent of the market in 1979, will not exceed 6 percent in 1980 and will not exceed 10 percent during the life of the Occidental-USSR agreement.

The principal beneficiaries of H.R. 7087 would be domestic and foreign ammonia producers other than those in Communist countries.

There is no demonstrated threat of overdependence on the USSR. U.S. anhydrous ammonia exports continue to exceed imports and could be restricted if required to meet domestic requirements.

The domestic ammonia industry is healthy and running at a high level of capacity.

Scheduled increases in production capacity in Mexico, Trinidad, Canada and in the U.S. are adequate to protect against any threat of overdependence on the USSR.

Importation of ammonia from the USSR will result in less consumption of supplies of domestic natural gas. Such conservation is in the national interest.

For the reasons set forth above, we respectfully urge the Subcommittee to reject H.R. 7087 as well as any proposal to impose quota restrictions on anhydrous ammonia from the USSR.

We request that this letter be made a part of the Subcommittee's hearing record on this bill.

Sincerely yours,

FRANK WOOTEN,
Vice President, General Manager.

H.R. 7139

To suspend for one year the duties on wrapper tobacco.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

The proposed legislation, if enacted, would suspend, for a one year period, the import duty on cigar wrapper tobacco provided for in items 170.10 and 170.15 of the Tariff Schedules of the United States (TSUS). The probable purpose of the legislation would be to reduce the costs to the cigar manufacturing industry of a needed raw material.

Cigar manufacturers have been confronted with a declining market for their products in the face of the waning popularity of cigars in recent years and increasing costs of production, which they claim they cannot entirely pass on to consumers owing to elastic demand. Traditionally, cigar production has been very labor intensive. More cigars are now being made by machine, using increasing amounts of manufactured tobacco sheet [1] in place of wrapper tobacco. However, for certain brands of cigars and those in certain price ranges, manufacturers still want to produce the traditional product made with wrapper tobacco. The cigar manufacturers feel that the imported wrapper tobacco does not compete with the type of wrapper tobacco currently produced in the United States, and that the only effect of the import duties is to increase their cost.

DESCRIPTION AND USES

The term "wrapper tobacco," as defined in the TSUS (headnote 1, part 13, schedule 1), means "that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers." [2] Wrapper leaf is employed as the smooth outer covering of cigars and is thin and elastic, of fine texture, even color, free from large veins, neutral in taste when burned, or with a flavor blending well with that of the filler and binder tobacco used in cigars.

Wrapper and filler are generally imported mixed together in the same bales. Certain types of tobacco are specifically grown for use as wrapper tobacco. However, during the processes of harvesting, grading, drying, fermenting and shipping of these leaves, some product which was initially wrapper tobacco becomes unusable as wrapper and is, therefore, put in to the class of "filler tobacco".

Due to the process of initial grading and bundling by leaf size into hands of approximately thirty leaves and subsequent packing of these hands into bales prior to curing, much of the wrapper quality leaf when imported is mixed with or "commingled" with "filler tobacco" (that which is no longer usable as wrapper).

The type of tobacco plants used for wrapper vary from geographical area to area, and have changed over the years with the need to develop strains resistant to particular plant diseases. Differences in plant strain, together with the effects of different soils, fertilizers, cultivation, and curing practices, cause important differences in leaf characteristics.

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[1] This sheet is made by grinding tobacco into a fine powder, mixing it with a cohesive agent, and then rolling it into a flat sheet of uniform thickness and quality. The use of manufactured sheet results in substantial savings in both leaf and labor costs.

[2] Filler tobacco in U.S. tariff nomenclature is tobacco essentially in leaf form other than wrapper tobacco.

U.S. TARIFF TREATMENT

Wrapper tobacco is provided for in TSUS items 170.10 and 170.15. These provisions are as follows:

"Wrapper tobacco (whether or not mixed or packed with filler tobacco): 170.10—Not stemmed; 170.15—Stemmed." [3]

The current column 1 rate of duty on wrapper tobacco, not stemmed (item 170.10), is 36 cents per pound (the ad valorem equivalent (AVE) is 7.5 percent based on trade in 1979). The duty on stemmed wrapper tobacco (item 170.15), is 62 cents per pound (5.9 percent AVE, based on trade in 1979). These rates reflect the final concession rates granted on wrapper tobacco in the recently completed Tokyo round of trade negotiations and became effective January 1, 1980 in one stage. The rates prior to the negotiated reductions were 90.9 cents per pound for wrapper tobacco, not stemmed, and $1.548 per pound for wrapper tobacco, stemmed. Column 2 rates are $2.275 per pound for item 170.15.

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1980)

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

PART 13.—TOBACCO AND TOBACCO PRODUCTS

Item	Stat suf-fix	Articles	Rates of duty 1	LDDC	2
		Part 13 headnotes: 1. The term "*wrapper tobacco*", as used in this part, means that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, and the term "*filler tobacco*" means all other leaf tobacco. 2. The percentage of wrapper tobacco in a bale, box, package, or other shipping unit is the ratio of the number of leaves of wrapper tobacco in such unit to the total number of leaves therein. In determining such percentage for classification purposes, the appraiser shall examine at least ten hands, and shall count the leaves in at least two hands, from each shipping unit designated for examination. 3. The dutiable weight of cigars and cigarettes includes the weight of all materials which are integral parts thereof. 4. Provisions for the free entry of certain samples of tobacco products are covered by part 5 of schedule 8.			
		Leaf tobacco, the product of two or more countries or dependencies, when mixed or packed together:			
170.01	00	Not stemmed	$2.275 per lb		$2.275 per lb.
170.05	00	Stemmed	$2.925 per lb		$2.925 per lb.
		Wrapper tobacco (whether or not mixed or packed with filler tobacco):			
170.10	00	Not stemmed	36¢ per lb		$2.275 per lb.
170.15	00	Stemmed	62¢ per lb		$2.925 per lb.
		Filler tobacco (whether or not mixed or packed with wrapper tobacco):			
		When mixed or packed with over 35% of wrapper tobacco:			
170.20	00	Not stemmed	36¢ per lb		$2.275 per lb.
170.25	00	Stemmed	$1.548 per lb		$2.925 per lb.
		When not mixed and not packed with wrapper tobacco, or when mixed or packed with 35% or less of wrapper tobacco:			
		Cigarette leaf:			
		Not stemmed:			
170.28	00	Leaf, oriental or Turkish type, not over 8.5 inches in length	11.5¢ per lb		35¢ per lb.
170.32		Other	12.75¢ per lb		35¢ per lb.
	10	Flue-cured			
	30	Burley			
	40	Other			
170.35	00	Stemmed	41¢ per lb	20¢ per lb	50¢ per lb.

[3] A copy of part 13 of schedule 1 of the TSUS which contains all of the tariff provisions for tobacco and tobacco products is set out on the following page.

Item	Stat suffix	Articles	Rates of duty 1	LDDC	2
		Other, including cigar leaf:			
170.40	00	Not stemmed	16.1¢ per lb		35¢ per lb.
170.41		If product of Cuba	12.6¢ per lb. (s).		
170.45	00	Stemmed	20¢ per lb		50¢ per lb.
170.46		If product of Cuba	18¢ per lb. (s).		
		Tobacco stems:			
170.50	00	Not cut, not ground, and not pulverized	Free		Free.
170.55	00	Cut, ground, or pulverized	55¢ per lb		55¢ per lb.
170.60		Scrap tobacco	16.1¢ per lb		35¢ per lb.
	20	Cigar leaf			
	40	Other			
170.61		If product of Cuba	12.6¢ per lb. (s).		
		Cigarettes:			
170.63	00	Containing clove	98¢ per lb. + 4.6% ad val.		$4.50 per lb. +25% ad val.
170.64	00	Other	$1.06 per lb. +5% ad val.		$4.50 per lb. +25% ad val.
		Cigars and cheroots:			
170.66	00	Cigars each valued 15 cents or over	86¢ per lb. +4.5% ad val.		$4.50 per lb. +25% ad val.
170.72		Other	$1.91 per lb. +10.5% ad val.		$4.50 per lb. +25% ad val.
	10	Small cigars and cheroots (weighing not more than 3 pounds per 1,000).			
		Other:			
	25	ATF statistical class A			
	35	ATF statistical class B			
	45	ATF statistical class C			
	55	ATF statistical class D			
	65	ATF statistical class E			
	75	ATF statistical class F			
	85	ATF statistical class G			
	90	ATF statistical class H			
170.72		If product of Cuba	$1.27 per lb. +8.5% ad val.(s).		
170.78	00	Snuff and snuff flour, manufactured of tobacco, of all descriptions	11¢ per lb		55¢ per lb.
170.80		Tobacco, manufactured or not manufactured, not specially provided for	17.5¢ per lb.		55¢ per lb.
	25	Smoking tobacco in retail size packages			
	45	Other			

(s)—Suspended. See general headnote 3(b).

Although not now eligible for duty-free treatment under the Generalized System of Preferences (GSP), there is currently an outstanding request to make wrapper tobacco eligible for GSP treatment. Virtually all of the imports of this product in recent years have been from GSP-eligible countries.

CUSTOMS CLASSIFICATION PRACTICE ON MIXED BALES OF WRAPPER AND FILLER TOBACCO

As can be seen from an examination of the tobacco tariff provisions in the attached copy of part 13 of schedule 1 of the TSUS, the provisions for wrapper tobacco (items 170.10 and 170.15) contain the phrase "(whether or not mixed or packed with filler tobacco)" and the provisions for filler tobacco contain the similar phrase "(whether or not mixed or packed with wrapper tobacco)." It would appear that such provisions were intended to require separate tariff treatment for wrapper and filler tobacco if imported mixed together in the same bale. Although Customs follows this practice with respect too bales which contain

35 percent or less of wrapper tobacco, if a bale is determined by Customs (pursuant to headnote 2 of part 13 of schedule 1) to contain more than 35 percent wrapper tobacco, the entire bale is classified as wrapper tobacco under items 170.10 or 170.15.

This long-standing Customs practice has not had an effect on duties until recently, because, prior to January 1, 1980, the wrapper tobacco and comparable filler tobacco provisions were subject to the same rates of duty. The duty rate on wrapper tobacco was lowered on January 1, however, as a result of the recently concluded MTN negotiations.

A great deal of concern has been expressed that the suspension of the duty on wrapper tobacco (either under the GSP or by legislation) in light of current customs classification practice could result in significant imports of cigarette filler tobacco under the duty-free provision established for wrapper tobacco. It is argued that importers of cigarette filler tobacco may obtain duty-free treatment simply by importing bales which contain 64 percent filler tobacco and 36 percent wrapper tobacco.

STRUCTURE OF THE DOMESTIC INDUSTRY

Cigar wrapper tobacco is produced in the United States principally in the Connecticut Valley of New England. Formerly, it was produced in Florida and Georgia, but it has not been produced in those States since the 1977/78 crop year. Trade sources indicate that nearly all current U.S. production of wrapper tobacco is by or under contract to cigar companies.

TABLE 1.--WRAPPER TOBACCO: U.S. PRODUCTION, FOREIGN TRADE, AND APPARENT CONSUMPTION, 1974-75 TO 1978-79

Period[1]	Production[2]	Exports	Imports[3]	Apparent consumption[4]	Ratio of imports to consumption (percent)
Quantity (thousand pounds, farm-sale weight):					
1974-75	10,988	4,354	1,386	7,415	19
1975-76	7,700	4,200	1,819	7,119	26
1976-77	7,198	3,768	1,993	5,733	35
1977-78	5,292	4,753	2,063	3,056	68
1978-79	3,773	5,294	[5] 1,973	2,916	68
Value (thousands of dollars):					
1974-75	58,910	19,961	5,488	(6)	(6)
1975-76	45,100	24,121	7,417	(6)	(6)
1976-77	38,030	21,140	8,193	(6)	(6)
1977-78	31,323	23,957	8,919	(6)	(6)
1978-79	28,500	32,102	[5] 8,455	(6)	(6)
Average unit value (per pound):					
1974-75	$5.36	$4.59	$3.96		
1975-76	5.86	5.74	4.08		
1976-77	5.21	5.61	4.11		
1977-78	5.91	5.04	4.32		
1978-79	7.55	6.06	4.29		

[1] Based on crop year beginning July 1.
[2] Production value, farm-sales basis (i.e., before fermentation, grading, and packing).
[3] Converted to farm-sales basis by the staff of the U.S. International Trade Commission; includes imports of filler tobacco mixed or packed with over 35 percent wrapper tobacco.
[4] Disappearance of domestic leaf, as reported by the U.S. Department of Agriculture, plus imports.
[5] Estimated by USITC staff.
[6] Not meaningful since values at different trade levels are not comparable.

Source: Except as noted, production, exports, and consumption compiled from official statistics of the U.S. Department of Agriculture; imports and value of exports compiled from official statistics of the U.S. Department of Commerce.

TABLE 2.—WRAPPER TOBACCO, STEMMED OR NOT STEMMED: U.S. IMPORTS FOR CONSUMPTION, BY PRINCIPAL SOURCES, 1975–79

Source	1975	1976	1977	1978	1979
Quantity (in thousand pounds):					
Cameroon	430	492	487	470	334
Nicaragua	520	553	751	630	606
Honduras	322	334	296	322	416
Mexico	83	71	65	108	54
Ecuador	33	39	34	24	29
Indonesia	1	0	0	6	5
Colombia	11	15	11	17	1
Netherlands	6	2	2	4	0
All other	50	115	39	42	30
Total	1,457	1,622	1,684	1,624	1,475
Value (thousands of dollars):					
Cameroon	3,458	4,118	3,960	4,185	3,033
Nicaragua	1,633	1,697	2,735	2,390	2,196
Honduras	901	938	870	974	1,298
Mexico	281	280	299	377	192
Ecuador	119	151	148	113	147
Indonesia	11			52	45
Colombia	49	84	63	65	5
Netherlands	54	10	10	43	
All other	427	738	350	90	265
Total	7,023	8,016	8,435	8,238	7,181
Unit value (per pound):					
Cameroon	$8.26	$8.37	$8.13	$8.90	$9.08
Nicaragua	3.14	3.07	3.64	3.79	3.63
Honduras	2.79	2.81	2.93	3.03	3.12
Mexico	3.37	3.94	4.64	3.48	3.59
Ecuador	3.60	3.85	4.29	4.64	5.10
Indonesia	16.31			9.15	8.51
Colombia	4.40	5.70	5.91	3.80	5.40
Netherlands	9.10	5.70	6.41	10.12	
All other	8.49	6.39	9.07	2.13	8.83
Average	4.82	4.94	5.01	5.10	4.87

Note.—Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

TABLE 3.—WRAPPER TOBACCO, STEMMED OR NOT STEMMED: U.S. EXPORTS OF DOMESTIC MERCHANDISE, BY PRINCIPAL MARKETS, 1975–79

Market	1975	1976	1977	1978	1979
Quantity (thousands of pounds):					
Dominican Republic	1,703	1,765	1,939	2,511	3,776
United Kingdom	731	467	341	432	527
Netherlands	160	601	652	318	523
Jamaica	39	51	56	90	49
Canada	161	188	58	51	41
Canary Islands	3	32	21	28	28
France	236	36	25	36	24
West Germany	425	214	361	119	48
All other	801	409	599	119	269
Total	4,260	3,763	4,052	3,704	5,283
Value (thousands of dollars):					
Dominican Republic	10,116	10,468	11,321	15,600	22,878
United Kingdom	7,010	4,338	3,188	4,514	6,078
Netherlands	1,415	4,612	3,027	2,744	5,207
Jamaica	360	508	649	758	544
Canada	934	1,194	392	254	295
Canary Islands	17	164	115	138	196
France	365	273	224	268	188
West Germany	1,089	517	790	265	106
All other	1,748	928	1,390	342	848
Total	23,053	22,966	21,095	24,882	36,340
Unit value (per pound):					
Dominican Republic	$5.94	$5.93	$5.84	$6.21	$6.06
United Kingdom	9.59	9.28	9.36	10.45	11.54
Netherlands	8.84	7.67	4.64	8.64	9.95
Jamaica	9.13	9.92	11.53	8.40	11.17
Canada	5.79	6.36	6.73	4.96	7.28
Canary Islands	5.01	5.06	5.50	4.95	7.07
France	1.55	6.68	8.98	7.47	7.94
West Germany	2.56	2.42	2.19	2.23	2.22
All other	2.18	2.27	2.32	2.89	3.15
Average	5.41	6.10	5.21	6.72	6.87

Note.—Because of rounding, figures may not add to the totals shown.

Source: Compiled from official statistics of the U.S. Department of Commerce.

DEPARTMENT OF STATE

I have been asked to reply to your request for the views of the Department of State on HR 7139, a bill to suspend temporarily the duties on wrapper tobacco.

We understand the proposed legislation would enable the United States cigar manufacturing industry, which is experiencing financial difficulties due to rising costs and declining consumption, to obtain its import requirements on a more economical basis without severely impacting domestic wrapper production. We also understand however, that there is some concern that the provision of duty free treatment would stimulate the importation of tobacco that might be used for filler rather than for wrapper purposes. To minimize such a possibility, the Administration recommends that the proposed legislation be amended to limit the temporary provision of duty free treatment to imports of unstemmed wrapper tobacco classified for customs purposes under Item 170.10 of the Tariff Schedules of the United States and the quantity of such tobacco that may be imported free of duty to not more than 2 million pounds during the one year period.

If HR 7139 were amended to delete Item 170.15 and limit duty free imports under Item 170.10 to not more than 2 million pounds, the Department of State would have no objection to its enactment.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

DEPARTMENT OF AGRICULTURE

This is in reply to your request of April 29, 1980, for a report on H.R. 7139, a bill "To suspend for one year the duties on wrapper tobacco."

This Department recommends that the bill be enacted if amended to restrict duty-free imports to unstemmed wrapper tobacco only and to limit the quantity that may be imported free of duty to not more than 2 million pounds during the one-year period.

We recommend these changes be made by deleting "or 170.15" and inserting in lieu thereof "for not over 2 million pounds" in the table on page 2 of the bill.

The proposed changes would (1) address concerns expressed by U.S. producers of filler tobacco that suspending the duties on wrapper tobacco could permit an upsurge in filler imports—the tariff description of items 170.10 and 170.15 is "Wrapper tobacco (whether or not mixed and packed with filler tobacco)"; (2) provide cigar manufacturers an adequate supply of duty-free foreign-grown wrapper, taking into account requirements in recent years and the possibility of a disease-induced shortfall in the 1980 Connecticut crop; (3) assure that reimports of U.S.-grown wrapper under Schedule 806.2040 are not charged against the duty-free quota recommended for imports of foreign-grown wrapper—practically all imports of foreign-grown wrapper are unstemmed, falling under TSUS item 170.10, whereas reimports of U.S. wrapper under 806.2040 are stemmed.

We would also recommend a technical amendment to page 1, line 3, of the bill to show that it is the appendix to the Tariff Schedules of the United States which would be amended by the bill.

It is believed that the enactment of this proposed legislation would not result in the need for any additional funds.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

STATEMENT OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORANIZATIONS

H.R. 7139 would suspend for one year the duty on wrapper tobacco. This bill is important to affiliates of the AFL–CIO, because jobs depend on importing the items in question. Unusual circumstances in the condition of tobacco lead us to support the bill. The workers in the industry tell us that the tobacco they would normally use has been affected by mold and created a shortage. The import price has been driven up. It is very important to import the tobacco in order to hold their jobs. We, therefore, support H.R. 7139.

STATEMENT OF MICHAEL J. KOWALSKY, PRESIDENT, CIGAR ASSOCIATION OF AMERICA

The Cigar Association of America urges favorable action on H.R. 7139, which would suspend the "Column 1" rate of duty on cigar wrapper tobacco for a period of one year. This temporary duty suspension would help alleviate a serious problem facing the American cigar industry caused by the recent outbreak of "blue-mold" disease in Central America and the Connecticut Valley. The result will be a considerable shortfall in world production of wrapper tobacco, thereby forcing sharp price increases for this raw material. Both cigar producers and consumers throughout the United States will be adversely affected by such price increases until the "blue-mold" blight has run its course.

"Blue-mold" disease has currently affected about 15 percent of the Connecticut wrapper production, virtually destroyed all the Cuban production and severely affected production in Central America. See Attachment I. The resulting shortage in worldwide wrapper tobacco supplies will have a serious impact on U.S. cigar production over the next two years.

It should be noted that cigar wrapper tobaccos[1] are used exclusively in the manufacture of cigars. Wrapper tobacco represents between 27 percent and 37 percent of the factory cost of manufacturing a natural wrapper cigar. The U.S.

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[1] TSUS Schedule 1 pt. 13, Headnote 1 defines wrapper tobacco as "that quality of leaf tobaccos which has the requisite color, texture and burn, and is of sufficient size for cigar wrappers * * *"

imports about 1.6 million pounds, in addition to the 4 million pounds produced domestically, for manufacture of large cigars.[2] See Attachment II. Wrapper tobaccos from different growing areas have distinct flavor, coloring and textural characteristics associated with particular brands. Imported wrapper, which is usually sun-grown, is not generally interchangeable with domestic wrapper. which is shade-grown in the Connecticut Valley. In short imported wrapper is not a substitute for domestic wrapper, but rather complements domestic wrapper in cigar production. Consequently, the temporary duty suspension would not adversely affect any U.S. wrapper tobacco growers.[3]

Moreover, the temporary duty suspension would in no way impair any agricultural price supports, since domestic cigar wrapper tobacco is not, nor has it ever been, under the price support program administered by the U.S. Department of Agriculture.

The one-year duty suspension provided in H.R. 7139 on imports of cigar wrapper tobacco (stemmed or unstemmed) would help the U.S. cigar industry cope with an extreme cost-price squeeze occasioned by a temporary wrapper supply crises—the outbreak of "blue-mold" disease. For that reason the Cigar Association of America, Inc.,[4] believes that H.R. 7139 merits favorable action by the Ways and Means Committee.

ATTACHMENT I

December 18, 1979.

Fm: USDA FAS, Wash., D.C.

To: RUESBG/AmEmbassy, Bogota; RUESRS/AmEmbassy, Caracas; RUESGT/AmEmbassy, Guatemala; RUEHME/AmEmbassy, Mexico; RUESJO/AmEmbassy, San Jose.

Subject: Tobacco Field Blue Mold.

Because of extensive damage to 1979 U.S. and Canadian tobacco crops by field blue mold, an early warning system has been established to detect outbreaks in the 1980 crop. Some evidence suggests the 1979 outbreaks may have originated in the Caribbean area. Please survey industries to ascertain if blue mold was present in 1979 and/or if it is present in the current crops. Report outbreaks to tobacco and cotton division by TDFAS.

FM: AmEmbassy, Guatemala.
TO: Ruehc/SecState Wash DC 3701
Subject: Tobacco Field Blue Mold Outbreaks—Honduras.

1. Major tobacco trade contacts surveyed March 6–7 indicate following: blue mold infections found beginning about 25 February 1980 during cold damp weather in Honduras Trade unsure where it started but this info may come out through further trade contacts with farmers, extend of damage roughly estimated at 1,000 acres, with outbreaks noted in most major tobacco areas. Preliminary info indicates Havana tobacco plants have been affected the hardest. Dry weather of last week, if continues, could help contain problem areas. So far it appears leaf mold is of light or air borne type attacking leaves rather than root systems.

2. Current information indicates over ten major tobacco areas affected, although extent of damage each area not yet known. As example, important Jamastran Valley affected in four separate locations one of which reports 20 percent loss in shade tobacco, 5 percent loss in Sun Tobacco, all cigar type. We also heard of infections in Jalapa Valley nearby in Nicaragua.

3. Information somewhat spotty since Honduras has no cohesive tobacco association or other institutional organization for info exchange or action program. Trade plans consult Agmin Eallejas and with other trade members on this issue with eye toward developing action program with U.S. participation if possible.

4. Trade seeks current update on U.S. and foreign situations especially canadian experience ze methods, efficacy and costs of control program in Canada re ridomil (spray or systemic types) or any new materials appropriate to combat leaf mold. Information needed urgently. Ortiz.

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[2] Treasury defines a large cigar as "weighing over 3 lbs. per 1,000."

[3] It is our understanding that the Shade Growers Agricultural Association (P.O. Box 563, Glastonbury, CT), which represents over 80 percent of domestic cigar wrapper production, fully supports this legislation.

[4] The Cigar Association of America, Inc., is a trade association located at 1120 19th Street, N.W., Washington, D.C. Its members consist of cigar manufacturers which account for nearly 95 percent of all large cigars sold in the United States, as well as leaf dealers. The vast majority of cigar wrapper tobacco imported under TSUS items 170.10 and 170.15 are imported by the Association's members.

WEEKLY ROUNDUP

TOBACCO

Blue-mold outbreaks are currently reported in both Honduras and Nicaragua. In Honduras, the infection began about the last week in February in most major tobacco areas during cold, damp weather. From early indications, the blue mold appears to be the light, air-borne, spore-type, which attacks the leaf rather than the root system and can be carried in the wind as far as 200 miles on a cloudy, cool and wet day. Approximately 1,000 acres are reported damaged in Honduras so far, with the Havana-type tobacco being hit the hardest. In the important Jamastran Valley trade, sources indicate a 20 percent loss in share tobacco and a 5 percent loss in sun-cured tobacco.

In Nicaragua, a serious outbreak of blue mold is reported in burley and cigar types in the Jalapa Valley, affecting some 1,000 acres.

The industries in both Honduras and Nicaragua are importing Ridomil (a fungicide) to combat the disease; however, the disease can only be effectively controlled in the plant-bed stage and the tobacco crops in both of these countries are currently in later stages of production. (Drafted by Samuel D. Smith, X73837).

ATTACHMENT II

U.S. CIGAR WRAPPER TOBACCO (TYPE 61—SHADE GROWN),[1] DOMESTIC PRODUCTION, 1977-79

	Production (FSW)	Disappearance (FSW)
1979	4,100,000	----------
1978	3,800,000	4,700,000
1977	5,100,000	5,000,000

[1] Grown in the Connecticut Valley.

Source: U.S. Department of Agriculture, Tobacco Situation, December 1979.

WRAPPER TOBACCO IMPORTED FOR CONSUMPTION INTO THE UNITED STATES, 1977-79

[Reported weight]

	Honduras/ Nicaragua	Other	Total
1979	1,022,000	505,000	1,527,000
1978	952,000	672,000	1,624,000
1977	1,047,000	637,000	1,684,000

Source: U.S. Bureau of the Census, 1M-145.

[From the Times-Picayune, Mar. 15, 1980]

CUBAN CIGAR FACTORIES CLOSED; 26,000 IDLED

(Virginia Hamill, The Washington Post)

Cuba's already ailing economy was dealt a major blow Friday as the government laid off 26,000 workers and temporarily closed the country s cigar factories.

The move, which followed failure of 90 percent of the country's tobacco harvest because of disease, and which could involve the loss of as much as $100 million in badly needed tobacco export earnings, marked a further deterioration in some of the most severe economic difficulties since the 1959 revolution.

According to industry sources, Cuba exports about 125 million cigars abroad annually, primarily to Europe, where there premium brands can command $8 to $10 a cigar at retail prices. The American trade embargo against Cuba prevents sale of the cigars in this country, although some find their way by a variety of routes.

One industry source said it will not be long before the shortage will begin to be felt.

Pre-revolutionary Cuba had a corner on the world cigar market, with an unrivaled reputation for quality and workmanship, according to Larry Garfinkel of Garfinkel Tobacconists in Washington.

After the revolution, however, the quality of many Cuban brands dropped, in the view of some cigar connoisseurs, although Garfinkel said the top brands remain excellent as well as "expensive as can be."

Friday's closures came two months after Cuban President Fidel Castro tightened his control of key government ministries in an attempt to arrest the yearlong decline of the economy.

Although Soviet economic aid to the country is said by State Department sources to total $3 billion annually, this has not been insulation enough from inflation, low economic growth, declining foreign currency reserves and—Cuban officials themselves increasingly stress—low productivity tied to both management and labor inefficiency.

In addition, the country's key export crop, sugar, has been hit by disease and swine fever has reappeared in the eastern part of the country, Castro said in a speech last Saturday to the third congress of the Cuban Women's Federation.

Castro called for a "special effort for the (sugar) harvest in all the provinces during the months of March and April, and an extraordinary effort in May and June to finish the harvest and do the planting." He highlighted the importance of sugar to the island's economy, "especially now because the current high price of sugar can in part compensate for the effects of the various plagues, like in tobacco."

The U.S. Department of Agriculture estimated Cuba's 1977 tobacco crop at 45,000 metric tons, and the 1978 crop at 46,000 metric tons.

For 1979, when the first outbreak of blue mold disease hit the tobacco crop, the estimate was 30,000 metric tons. Castro said the 1980 crop was about 5,000 metric tons.

In his speech, Castro said Cuba was suspending tobacco exports for this year and that some tobacco will be imported "to maintain the consumption levels for the population." Informed sources said Cuba already imports quantities of tobacco from Spain.

Blue mold can be effectively treated with a Swiss fungicide, Ridomil, according to Harvey Spurr, professor of plant pathology at the University of North Carolina, who also conducts research for the U.S. Agriculture Department.

The chemical is expensive, however, and in short supply. The United States, which also was hit with blue mold last year, has been able to buy only enough to treat 40 percent of its crop, Spurr said. Last year's U.S. and Canadian losses to the disease amounted to $252 million.

GEORGIA AGRICULTURAL COMMODITY
COMMISSION FOR TOBACCO,
Tifton, Ga., May 21, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: We have prepared the following statement opposing H.R. 7139 to suspend for one year the duties on wrapper tobacco.

I am Fred W. Voigt, Chairman of the Georgia Agricultural Commodity Commission for Tobacco. The Commission is composed of five tobacco growers and four ex officio members. The ex officio members are Georgia's Commissioner of Agriculture, Georgia's Attorney General, Georgia's State Auditor and the President of the Georgia Farm Bureau Federation. It is the responsibility and the duty of the Georgia Tobacco Commission to be the spokesmen and to represent in all matters of this kind the 25,000 flue-cured tobacco allotment holders of Georgia. We also recognize our common interest in all tobacco problems affecting one-half million farm families growing flue-cured tobacco within the States of Georgia, Florida, Alabama, South Carolina, North Carolina and Virginia. In cases such as House Bill H.R. 7139 we have a mutual problem and concern for its effect on the economic well being of another half million farm families in several other States that produce burley, dark fired, Maryland and all other types of cigar tobacco.

It is beyond our comprehension how a bill of this kind could be proposed in our country with an economic system that has struggled for two centuries to overcome discrimination that existed between our industrial complex and our labor population. Our system today has become the model of a lifestyle which is the envy of the world and has placed us in a position that no other nation of the earth has ever enjoyed.

What logic and whose persuasion has influenced one of the most important departments of our Government, the Department of Labor to encourage and endorse the passage of this bill. Why was it that so few knew about this bill and so little time was given those few for evaluating the bill's merits and to express their views about it.

In spite of the fact that we who represent various tobacco grower organizations were not even aware of the hearing before the House Subcommittee on Trade, a decision was made to endorse H.R. 7139 by this powerful agency of our Federal Government, the Department of Labor. What prompted the Department of Labor to endorse this precedent setting legislation in favor of cigar manufacturer employees who are outnumbered 10 to 1 by laborers engaged in the production of raw leaf tobacco in our country whose interests are supposed to be protected by the Department of Labor of the United States.

The growers of all types of tobacco in America are having to produce their crops with equipment, fertilizer, chemicals of all kinds and energy of every sort that is made and manufactured by union labor. The farmers of our country who produce the food and fiber for all of us as well as millions of less fortunate humans abroad are the greatest customers of union labor on earth. Because of our system, we are forced to use the products of union labor if we follow our preferred way of life as farmers. But in so doing, we have become the chattels of the labor unions. Why should the Department of Labor take such a strong position on this bill without consideration of our tobacco growers.

In supporting this bill the Department of Labor is completely reversing the system of free enterprise, is discriminating against the majority (farm laborers outnumber cigar manufacturer employees 10 to 1), and aiding and abetting those who would destroy this system and the principles that made and developed our country into the greatest.

We do not see how the Department of Labor can justify their position on this bill if they are willing to evaluate its possible impact on all future farm laborers who could be adversely affected by its passage. In addition to the Department of Labor, we understand that the Department of Commerce, and our Special Trade Representative have also endorsed this bill.

In 1979 our Special Trade Representative under Ambassador Robert Strauss had deliberated for many months with our offshore trading partners and a trade package was agreed upon by our Congress and signed into law by our President Jimmy Carter. In this agreement the cigar manufacturers received a 60 percent reduction on import duties on cigar wrapper tobaccos. This was the largest concession made on any tobacco item in the trade package. Now the cigar manufacturers want it all. The position of our tobacco growers against this bill which we consider far reaching, precedent setting legislation has been largely determined by past actions of our various Governmental agencies. A famous quote says "the past is a prologue to the future."

The Congress cannot pass the bill without acceding to any future requests from many dealers or manufacturers for cheap farm grown tobaccos under any real or imagined reason or pretense. The Cigar Association of America will be the sole beneficiary if this bill is passed and they have pleaded for its passage on only two points. Firstly, that the cigar industry is suffering from declining business and secondly, that a tobacco disease, blue mould, is reducing their current crop of cigar wrappers by 20 percent which is a percentage difficult to determine.

We recognize that the cigar business is declining, and has been for several years, but we doubt that a loss of even 20 percent in wrapper production will break the cigar manufacturers or resolve their problems. They have indicated that they would accept duty-free imports of 2 million pounds of foreign grown wrapper which they have stated was a years requirement. United States Department of Agriculture figures show that present inventories of cigar wrappers in warehouses of cigar manufacturers to be more than 10 million pounds as of July 1, 1979. This is more than two years' requirments as they have stated and should nullify this request.

Growers of types other than cigar wrapper are seriously concerned about the steadily rising volume of tobacco imports into the United States from cheaply grown foreign production. With our standard of living and union wages that affect every farm production cost, our farmers will never be able to compete with foreign production of raw leaf tobacco and this bill, if passed, could within a few years seriously affect the economic position of our tobacco farms.

The plea of the cigar manufacturer for passage of this bill is valid only because of a situation they have brought upon themselves. There is no agricultural commodity which we farmers of the United States cannot or will not produce if given

the opportunity to make a fair profit on our labor and investments. The scarcity of any type raw tobacco can be adjusted within a year in our own country by our own farmers if given this support. We refer you now to two precedent setting actions of our Department of State, with the assistance of several other Governmental agencies.

A little more than a decade ago our Government in an effort to assist Less Developed Nations gave technical assistance and through the International Bank for Reconstruction and Development gave millions of dollars in loans to several central American countries to develop the production of cigar wrapper tobacco. This was the beginning of the decline of type 62 cigar wrapper tobacco production in Gadsden County, Florida; and Grady and Seminole Counties, Ga. This thriving area of shade tobacco production was before the turn of this century. In just a decade this industry which at one time produced 7,500 acres of high-quality shade cigar wrapper tobacco with an annual income of $25 million completely died. It was pitiful to travel through this part of Northern Florida and Southern Georgia and see the millions of dollars of shaded fields and curing barns rotting away. In addition, several thousand workers who were lifelong residents lost their means of a livelihood and became recipients of welfare checks. The second precedent setting action of our Governmental agencies occurred about a decade ago. We were amazed to learn that the International Bank for Reconstruction and Development had approved loans of 10 to 12 million dollars each to the African countries of Tanzania, Malawi and Zambia. These loans were to be used along with our technical assistance to put these nations into the production of flue-cured tobacco. We recognize this move by our Government no matter how well intentioned as an effort that would develop competition with our flue-cured tobacco growers for our established export markets in Europe and the Orient.

Our Tobacco Commission drafted a strong resolution which was sent to the Congressional delegations of various tobacco producing States. Our representatives in the Congress vigorously protested this action by the World Bank. The bank replied to everyone that they were committed to give aid to those countries who were underclothed and underfed. In order to help them they had decided on flue-cured tobacco as a new source of income. The bank was then requested that the loans be used to produce those countries' needs for food and fiber instead of tobacco, to which the bank replied that those countries' production of flue-cured tobacco would never be a factor in world trade or have any effect on world prices of tobacco.

Today, those countries are producing millions of pounds of good-quality flue-cured tobacco in direct competition with us in the world markets. They also have a distinct advantage on us by having access to many of the markets we serve in the European community duty free.

This bill is designed to favor only the dealers of cigar tobacco and the manufacturers of cigars. The American consumer will not share in savings on cigars and our Government will lose millions of dollars in import duty revenues. This bill is only a windfall for the cigar manufacturers.

The American growers of raw leaf tobacco today are faced with the most serious competition from foreign tobacco production we have ever had in the history of our country. This bill, if passed, will open the door to greater imports of flue-cured, burley, and all other types of tobacco and our United States growers will be the only eventual losers.

We would like the U.S. Department of Labor to explain to the gentlemen of the committee why they are supporting foreign cigar manufacturer's products made in many parts of the world with semi-slave labor and against the best interests of more than a million farm workers in this great country of ours.

We earnestly request that H.R. 7139 not be passed.

Respectfully submitted.

FRED W. VOIGT, *Chairman.*

NATIONAL CIGAR LEAF TOBACCO ASSOCIATION,
Washington, D.C., May 15, 1980.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We have been advised that your Subcommittee will again consider on May 21, 1980, the proposed legislation contained in H.R. 7139.

We have been further advised that the Administration's position will be to delete TSUS Item 170.15 and recommend that a quota of not more than 2 million

pounds of wrapper tobacco, TSUS 170.10, be permitted duty free entry for a period of one year.

We respectfully submit, for your Subcommittees' consideration a copy of the joint statement presented to the United States International Trade Commission at public hearings in Washington, D.C., on January 24, 1980, regarding GSP treatment for TSUS Item 170.10 and other cigar leaf.

The long-standing attempt of the domestic cigar manufacturers to obtain tariff relief for imported cigar tobacco and the windfall profit from the reduction and/or elimination of the tariff duty has been opposed by the American producers of tobacco over the years. This latest attempt to secure a one year duty free quota appears also to be profit motivated, since there is considerably more than a 2 year supply of wrapper tobacco in bonded storages in the United States.

Our domestic cigar manufacturers would be hard pressed to justify the need for duty free imports other than the economic windfall that will accrue to them as a result of the entactment of this proposed legislation.

On behalf of the membership of our individual tobacco growers Associations, we strongly oppose any further reduction on import duties for cigar wrapper tobacco.

Respectfully submitted.

FRANK B. SNODGRASS,
Executive Vice President,
also Vice President and Managing Director,
Burley and Dark Leaf Tobacco Export Association, Inc.
KIRK WAYNE,
President, Tobacco Associates, Inc.

JOINT STATEMENT PRESENTED TO THE U.S. INTERNATIONAL TRADE COMMISSION AT PUBLIC HEARINGS IN WASHINGTON, D.C. ON JANUARY 24, 1980 REGARDING [TA-503(a)-6 AND 332-107] CONCERNING GSP TREATMENT OF TSUS ITEMS 170.10, 170.15, 170.65 AND 170.66 AS ANNOUNCED IN FEDERAL REGISTER VOLUME 44 No. 250—76869-70, DECEMBER 28, 1979

This joint statement is presented by Kirk Wayne, President, Tobacco Associates, Inc. Suite 912, 1101—17th Street, N.W., Washington, D.C. 20036, telephone No. (202) 659-1160; and Frank B. Snodgrass, Vice President and Managing Director, Burley and Dark Leaf Tobacco Export Association, Inc., also Executive Director, National Cigar Leaf Tobacco Association, Inc., Suite 306, 1100—17th Street, N.W., Washington, D.C. 20036, telephone (202) 296-6820 and (202) 296-6863.

The aforementioned organizations collectively represent approximately one million tobacco producers in the United States. In addition, they have associate memberships from tobacco warehousemen, bankers, exporters, fertilizer manufacturers and merchant associations.

Tobacco Associates represents approximately 400,000 flue-cured tobacco families in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. The Burley and Dark Leaf Tobacco Export Association represents approximately 500,000 tobacco families in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia and West Virginia. The National Cigar Leaf Tobacco Association represents approximately 12,000 cigar tobacco producers in the States of Ohio, Wisconsin, Connecticut and Massachusetts. The membership of these organizations bitterly oppose the granting of GSP on any tariff item covering the importation of tobacco, or tobacco products, into the United States.

The U.S. Department of Agriculture has since 1940 supported the price of Flue-cured, Burley, Dark air-cured, Dark fire-cured and Cigar Binder and Filler tobaccos produced in the United States and Puerto Rico. This price support program with production controls, is considered the most successful commodity program in operation in this country. Since modern manufacturing technology makes the use of many types of tobacco interchangeable, any proposal to grant GSP on imports of foreign produced tobacco would pose a serious threat and the possible end of this vital program that has meant so much to the producers of tobacco in this country.

The petitions filed by the Government of Nicaragua and the Cigar Association of America, Inc., requesting GSP treatment for wrapper tobacco, items 170.10 and 170.15, are particularly disturbing to our membership. Their petition was filed before the implementation of the Trade Agreements package that was enacted, granting the maximum allowable reduction of 60 percent on the classi-

fication for cigar wrapper type tobacco imported into the United States. This relief to the cigar industry as manifested by the reduction in duty of TSUS No. 170.10 from 90.9 cents per pound to 36.4 cents per pound and No. 170.15 from $1.548 to 61.9 cents per pound was a most liberal concession to the U.S. cigar manufacturing industry.

The tobacco producing membership of our organizations maintains that all tobaccos entering the United States are extremely import sensitive. Granting GSP duty-free treatment for any type tobacco imported into the United States would create a chaotic economic condition for U.S. producers of tobacco.

Tobacco imported under TSUS 170.10 and 170.15 would not only include wrapper tobacco but also tobaccos suitable for binder and filler in cigars as well as filler in cigarettes, pipe tobacco, chewing tobacco and snuff. Therefore, GSP for these items would make possibly duty-free imports that would compete directly with all major types of tobacco grown in the United States and Puerto Rico and utilized in the full range of manufactured tobacco products.

The headnote definition of wrapper tobacco [refer to page 73, part 13 of the TSUS] reads quote . . . that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, and the term "filler tobacco" means all other leaf tobacco. Unquote. This definition is merely a description of the physical characteristics of the leaf and does not identify wrapper as a specific class or type of tobacco and it does not state that tobacco imported under the wrapper classifications will be used only to wrap cigars.

The customs definition in no way controls the end product use of tobacco imported under these tariff items. In fact, damaged or imperfect wrapper leaves are commonly used as binder and filler in cigars. Furthermore, the description of wrapper tobacco states "whether or not mixed or packed with filler tobacco" [refer to page 74 TSUS] and any type of tobacco including Flue-cured and Burley can be legitimately considered filler tobacco and imported under these tariff item definitions.

The term wrapper applies to many types of tobacco as published in USDA official standard grades which designate 66 wrapper grades for 13 major types of tobacco produced in the United States and Puerto Rico. In addition to the established shade-grown tobacco wrapper types: Flue-cured, Virginia fire-cured, Kentucky and Tennessee fire-cured, one sucker and Green River dark air-cured and Virginia sun-cured also produce grades of tobacco classified as wrappers. The wrapper grades from these types are used in a variety of tobacco products other than cigars manufactured in the United States and abroad.

We are of the opinion that there are no means by which we can be assured that tobacco other than that used for wrapping cigars will not be imported into the United States under the aforementioned classifications should GSP be granted on those items.

Any proposal to establish a minimum import value requirement to distinguish between tobacco to be actually used for wrapping cigars and tobacco used for other purposes would not be possible. Import value levels placed on any tobacco can be arbitrarily established. There are no means for customs to confirm with certainty the true value of any tobacco entering the United States. There are no established futures markets for tobacco or any international commodities market that quote prices of tobacco being purchased by the trade on a daily basis.

The concept of a proposal to establish certain sorting or packing import requirements to distinguish between tobacco to be actually used for wrapping cigars and tobacco used for other purposes would be meaningless. Requirements to "tie in hands" or "separate stemmed leaf by right and left hand" or any other physical manipulation would not be effective because of abnormally low labor cost in developing countries. The 1979 commercial fees for custom tying tobacco in hands charged in the United States was 13.5 cents per pound. Such manipulation would be considerably less expensive if performed in developing countries. Therefore, providing sufficient incentive to prepare tobacco in any manner necessary to take advantage of a GSP category.

It is interesting to note the increased imports into the United States under the tariff classification for scrap tobacco [TSUS 170.60] in the past few years. Total scrap imports in calendar year 1955 were 11,815,000 pounds and in 1978 they had risen to 119,072,000 pounds.

This scrap category was originally established to cover such by-products as cigar trimmings, floor sweepings and other scrap accumulated in the manufacturing of foreign cigars. However, the advanced tobacco processing technology for converting leaf into strips encouraged foreign imports of cigarette leaf to seek the lower rate for scrap tobacco. Since the stems are removed and imported at a duty-

free rate the balance of the broken leaf remaining could be imported as scrap at a much lower rate than as whole leaf or stemmed tobacco. A similar pattern can be expected if any classification for tobacco imports into the United States is granted GSP duty-free status.

We are alarmed at the magnitude of the economic threat to U.S. tobacco producers should GSP be granted on any tobacco tariff item. The 1980 list of countries and territories eligible for GSP rates number 147 which includes the following major producers and exporters of tobacco competing directly with U.S. tobacco: Argentina, Brazil, India, Korea, Malawi, Mexico, Mozambique, Philippines and Zambia.

The U.S. tobacco producers cannot now, nor will they ever be able to, compete with the cheap labor in developing countries that produce the majority of our world competition. Granting duty-free [GSP] treatment for any tobacco entering the United States would destroy the domestic market for our tobacco producers. Additional deterioration of the domestic market would, through necessity, force U.S. tobacco producers to reduce their tobacco production units and thereby the availability of tobacco for export that has greatly benefitted the U.S. balance of trade position.

Reference is made to the petition for GSP on items 170.65 and 170.66. Since the world production and distribution of tobacco products is fast coming under the control of a few multi-national corporations, the same dangers, as outlined above for leaf tobacco, exists on these manufactured products for proliferation in our domestic market and therefore we oppose the granting of GSP for the aforementioned items.

THE SHADE TOBACCO GROWERS
AGRICULTURAL ASSOCIATION, INC.,
Glastonbury, Conn., May 7, 1980.

Representative CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR CHAIRMAN VANIK: The Shade Tobacco Grown Agricultural Association, Inc., is a non-profit trade association which represents the producers of approximately 85 percent of all domestic shade grown cigar wrapper tobacco. Clear wrappers are domestically produced only in the Connecticut River Valley area of Connecticut and Massachusetts. Shade grown tobacco is used exclusively for cigar wrappers and is officially designated as type 61 by the U.S. Department of Agriculture. Currently the Association has two members, Consolidated Cigar Company and Culbro Tobacco. Its business office is located at 196 New London Turnpike, Glastonbury, Conn. 06033, and the telephone number is 203-659-0519.

The Association strongly supports H.R. 7139, which proposes the suspension of Column 1 rates of duty on cigar wrapper tobacco for a one year period. The 1979 yield of type 61 crop was reduced approximately 15 percent by an outbreak of a condition known as blue mold. This loss, coupled with sharp acreage declines during recent years, has created a shortage of quality cigar wrappers. This shortage effects not only the domestic cigar industry but also is threatening the export market for Connecticut shade grown wrappers.

Suspension of duty as proposed by H.R. 7139 will be of assistance to the domestic producers of shade grown cigar wrappers during the current period of difficulty. We urge favorable action.

Sincerely yours,

ANTHONY F. AMENTA,
Executive Director.

H.R. 7145

To maintain at the present level the duty on levulose until the close of December 31, 1981.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 7145, if enacted, would amend the Appendix to the Tariff Schedules of the United States (TSUS) to continue until the close of December 31, 1981, the existing reduction of the column 1 rate of duty on imports of levulose. This duty reduction became effective June 29, 1978, and will expire June 30, 1980, unless extended.[1]

DESCRIPTION AND USES

Levulose is a monosaccharide which, together with dextrose (glucose), represents a basic component of the disaccharide sucrose (sugar). Of the monosaccharides, it is second in importance only to glucose. Levulose, which is also known as fructose, occurs commonly in the juices of fruits and as a component of honey. There is no natural source of pure levulose. Such levulose is the result of expensive manfacturing processes.

In the past, levulose could be produced only at a cost several times that of sucrose, and it was used primarily by pharmaceutical companies. In order of decreasing importance, it has been used in the preparation of intravenous solutions, orally administered products, and as a sweetener in speciality dietic foods. But today the cost of producing levulose has been reduced somewhat and it has new potential both as a general sweetener and as a dietetic food. But even with improved methods of production, levulose is significantly more costly to produce than sucrose or dextrose.

TARIFF TREATMENT

Levulose is classified under item 493.66 of the TSUS with a column 1 trade-agreement rate of duty of 20 percent ad valorem [2] and a column 2 duty rate of 50 percent ad valorem. Levulose has not been designated as an eligible article for duty-free treatment under the Generalized System of Preferences (GSP).

Levulose was the subject of a concession granted by the United States at the latest Multilateral Trade Negotiations. As the result of that concession, the column 1 rate of duty will be reduced in eight equal stages starting with the effective date for the United States of the Customs Valuation Agreement (expected to be July 1, 1980) to 15 percent ad valorem, effective January 1, 1987.

U.S. PRODUCTION

There is currently no U.S. production of pure levulose. However, a plant is being built by Hoffmann-LaRoche, Inc., in Illinois for production of levulose and should start production by mid-1981.

U.S. IMPORTS

U.S. imports of levulose since 1975 are shown in the accompanying table. Imports increased from 274,000 pounds valued at $175,000 in 1975 to 9.3 million pounds valued at $6.1 million in 1979. Hoffmann-LaRoche, Inc., is the U.S. agent for marketing levulose imported from Finland and will continue as such until the company begins domestic production of levulose in mid-1981.

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[1] Public Law No. 95-303, 92 Stat. 346.

[2] Levulose imported into the United States from countries subject to MFN duty rates has been subject to duty under item 907.90 at a rate of 10 percent ad valorem since June 29, 1978.

U.S. CONSUMPTION

There is presently no domestic production of levulose and exports are assumed to be negligible or nil. Accordingly, domestic consumption is approximately equal to imports.

POTENTIAL LOSS OF REVENUE

Based on the value for 1979 imports, the loss of revenue in 1979 resulting from the suspended duty was about $600,000. Future loss of revenue is expected to be about $330,000 in 1980. If domestic production of levulose begins in mid-1981, projected loss of revenue in 1981 would be about $350,000.

TECHNICAL COMMENTS

It is suggested that section 1 of the legislation be amended to read as follows:

"That item 907.90 of the Appendix of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out '6/30/80' and inserting in lieu thereof '12/31/81'."

The Committee may also wish to amend section 2 of the legislation to provide for retroactive application of the amendment made by section 1 in order to guard against the possibility that this legislation may not be enacted until afer June 30, 1980, the date that item 907.90 expires. This can be accomplished by designating current section 2 as "2(a)" and by adding the following new subsection:

(b) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of enactment of this Act, the entry or withdrawal of any article—

(1) which was made after June 30, 1980, and before the date of the enactment of this Act, and

(2) with respect to which there would have been a duty rate of 10 percent ad valorem if the amendment made by the first section of this Act applied to such entry or withdrawal,

shall, notwithstanding any other provision of law, be liquidated or reliquidated as though such entry or withdrawal had been made on the date of the enactment of this Act.

LEVULOSE (TSUS ITEM 493.66): U.S. IMPORTS FOR CONSUMPTION, BY PRINCIPAL SOURCES, 1975–79 AND JANUARY–FEBRUARY 1980

Source	1975	1976	1977	1978	1979	January–February 1980
Quantity (thousands of pounds):						
Finland	187	1,850	3,131	5,232	8,760	1,807
West Germany	67	66	111	62	377	0
Other	20	4	94	3	169	88
Total	274	1,920	3,336	5,297	9,306	1,895
Value (thousands of dollars):						
Finland	128	1,100	1,728	3,031	5,513	1,212
West Germany	36	45	79	47	422	
Other	11	2	56	2	116	59
Total	175	1,147	1,863	3,080	6,051	1,271
Unit value (per pound):						
Finland	$0.68	$0.59	$0.55	$0.58	$0.63	$0.67
West Germany	.54	.67	.71	.75	1.12	
Other	.52	.67	.59	.85	.69	.67
Average	.64	.60	.56	.58	.65	.67

Source: Official statistics of the U.S. Department of Commerce.

DEPARTMENT OF STATE

I have been asked to reply to your request for the views of the Department of State on H.R. 7145, a bill to reduce temporarily the duty on levulose.

The Department of State has no objection to enactment of the proposed legislation.

H.R. 7145 would in effect, continue for an additional period ending December 31, 1981, the temporary duty reduction provided by PL 95–303, effective June 29, 1978. We understand the considerations underlying the determination to reduce the duty on levulose continue to be valid.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

H.R. 7167

To amend the Tariff Schedules of the United States to permit the entry of certain valuable wastes resulting from the processing of merchandise admitted into the United States under bond.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 7167, if enacted, would amend headnote 2(b)(ii), subpart C, part 5, schedule 8 of the Tariff Schedules of the United States (TSUS) to add the following: "however, where valuable wastes are generated during the manufacturing process and where either the segregation or exportation, or both, of such wastes are or would be economically unfeasible, duties shall be tendered on such wastes at rates of duties in effect for such wastes at the time of importation."

The amendment to headnote 2(b)(ii) was requested to permit resumption of processing in the United States of steel coils (classifiable in TSUS item 608.84), temporarily imported under bond from Canada under TSUS item 864.05, for subsequent export to Canada. Prior to the cessation of operations in 1975, Samuel Strapping Ltd., Mississaugua, Ontario, shipped steel coils to Gibralter Steel Co., Buffalo, New York, for conversion into steel bands which were then returned to Canada. The U.S. facilities were used reportedly because of their ready availability when needed and because of some savings in costs. Scrap generated while processing the steel coils became intermingled with domestic scrap from other processing operations (not conducted in bond) and it was not possible to segregate the in-bond Canadian scrap from the domestic scrap. When U.S. Customs determined that the metal scrap constituted "valuable waste" and insisted that the scrap be destroyed or exported to Canada,[1] demands which were not economically feasible to meet, the Canadian firm stopped shipping the steel coils to the United States.

In 1977, Customs determined that the conditions of headnote 2(b)(ii) had not been met and assessed liquidated damages of $27,237 on 29 importations of steel coils entered during 1971—75 with a total value of $140,707. The liquidated damages represented a penalty equal to double the duties which would have accrued had all the articles covered by the entries been entered under ordinary consumption entries, and for which bond had been given.[2] The intent of this legislation is to permit such operations to continue in border ports such as Chicago and Buffalo, as well as in other areas of the United States (e.g., Birmingham) where similar operations had been suspended for like reasons.

BACKGROUND

The provisions for temporary importation under bond (TIB)[3] are a further elaboration of the U.S. customs laws relating to drawback.[4] Title 19 of the United States Code affords three basic procedures for exemption from duty on imported goods which are subsequently exported. A brief resume of each procedure follows—

The drawback procedure.—Under this procedure duty is paid and absolute possession of the imported goods obtained. Drawback or recovery of virtually all of the duty is allowed within certain limitations, upon exportation of the

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[1] As required by headnote 2(b)(ii), subpart C, part 5, schedule 8, TSUS.
[2] 19 CFR 10.31(f) (1979). See also, 9 CFR 10.39(d)(1) (1979).
[3] Subpart C, part 5, schedule 8, TSUS [Articles Admitted Temporarily Free of Duty Under Bond]. See also, 19 CFR 10.31 et seq. [Temporary Importations Under Bond] (1979).
[4] United States Tariff Commission. *Temporary Entry Provisions of Title 19 of the United States Code,* Investigation No. 332-45 (1965-69).

same goods, or articles made from them, or articles made from domestic goods of the same kind and quality.

The continuous customs custody procedure.—Under this procedure the imported goods are exempt from duty and remain under customs surveillance in a customs bonded warehouse or foreign trade zone, where they may undergo manipulation, processing, or manufacture, and from which they may be withdrawn for export without payment of duty.

The release under bond procedure.—Under this procedure full possession is obtained of the imported goods, without payment of duty, in exchange for bond given for exportation, after repair, processing or manufacture, or use of certain limited purposes.

The extent to which exemption from duty on imported materials can be an incentive to exports depends both on the amount of dutiable materials used and the amount of the duty.[5] In a previous report, the Commission stated that "items 864.05, 864.15, 864.25, 864.45, and 864.55 contain classification descriptions for the temporary entry of articles under circumstances which are intended, at least in part, to promote the exportation of U.S. labor in the form of commodities. All other items [in subpart C, part 5, schedule 8, TSUS] tend to promote temporary importation under circumstances which would appear to have no direct influence on the promotion of exports of domestic products."[6]

The provisions of TSUS item 864.05 were initiated, in part, in section 2507 of the Revised Statutes which provided that "Machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof to be withdrawn and exported after said machinery shall have been repaired * * *". The time period was six months from the date of importation. The Tariff Act of 1913 broadened the provision to include all "articles to be altered or repaired". Section 308 of the Tariff Act of 1930 extended the scope of the provision to permit an extension of the initial time period, not to exceed six months, in which the article must be exported. In 1953 the initial period was changed to one year with two additional 1-year extensions being permitted at the discretion of the Secretary of the Treasury because the former periods of time had "proved insufficient". Temporary importation procedures of the kind now provided for in item 864.05 have been in effect since 1958. The scope of this provision of section 308 of the Tariff Act was extended to include manufacturing operations in 1958 because small manufacturers were experiencing difficulties in the use of the general drawback procedures which involved costly delays in obtaining the drawback payments.[7]

The temporary bond provisions of section 308 of the Tariff Act were carried over, without change in substance, to subpart C, part 5, schedule 8 in the *Tariff Classification Study*. The language of TSUS item 864.05 was derived from subdivision 1 of section 308 of the Tariff Act. The language of headnote 2(b)(ii) was taken, almost verbatim, from section 308(1)(B)(ii).[8]

With regard to the administrative costs of the TIB procedure, the Commission has previously stated:

"It is evident that the Congress, in connection with the general drawback procedures, intended that the residuary amount of duty returned after payment of drawback was to pay, at least, in part, for the cost of administration. It may be noted that a similar situation exists with respect to . . . bonded warehouse procedures. In these procedures the warehouse proprietor must reimburse Treasury for the salaries of customs officers who physically supervise the operations at the warehouse. These costs are, of course, indirectly paid by the importer of the merchandise placed in the warehouse. However, as administrative costs incurred at the customhouse are not reimbursable, it may be concluded that the operation of warehouse procedures is not wholly self-supporting. A like situation exists with respect to foreign trade zones. No administrative costs of the Government are absorbed by an importer temporarily entering goods under bond (TIB) for subsequent export pursuant to [subpart C, part 5, schedule 2]."[9]

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[5] *Id., Report on Use of Temporarily Entry Procedures and Tentative Proposals* at 1–2 (TC Pub. No. 286) (May 1969).

[6] *Id., Report on Use of Temporary Entry Procedures and Tentative Proposals* at 1–2 (TC Pub. No. 286) (May 1969).

[7] *Id., Report on Legislative Objectives* at 59–60 (TC Pub. No. 170) (March 1966).

[8] Section 308(1) of the Tariff Act of 1930, as amended by ch. 679, sec. 4, 52 Stat. 1079, June 25, 1938; ch. 397, sec. 10(a), 67 Stat. 512, Aug. 8, 1953; Pub. L. No. 85-414, sec. 1, 72 Stat. 118-9, May 16, 1958.

[9] United States Tariff Commission, *Tariff Classification Study*, sch. 8 at 74–6, 79, 83–4 (November 15, 1960).

[10] TC Pub. No. 170 *supra*, at 69.

TARIFF TREATMENT

Articles may be admitted into the United States temporarily free of duty under bond [10] (TIB) guaranteeing their exportation or destruction within one year from the date of importation, a period which may be extended, at the discretion of the Secretary of the Treasury, for two further 1-year periods.[11] The articles may be repaired, altered, or processed (including manufacture), and within prescribed limits otherwise used before exportation.[12]

To avoid liquidated damages, the importer must render a complete accounting for all articles, wastes, and irrecoverable losses resulting from processing the imported article.[13] If he elects to destroy the goods in lieu of exportation, the destruction must be accomplished under customs supervision within the bond period.[14] The statutory provisions are administered on the basis of import and export documents, supplemented by periodic inspection of the goods and examination of the importer's records. An aircraft engine or propeller, or any part or accessory of either, imported under item 864.05, which is removed physically from the United States as part of an aircraft departing from the United States in international traffic shall be treated as exported,[15] even though there has been no technical "exportation".[16]

With respect to "valuable wastes" generated from the processing of merchandise admitted into the United States under TIB procedures, the Customs Service has stated:

"It is clear from [Headnote 2] that the accounting for articles, waste, and irrecoverable losses is necessary only when the processing "results in an article manufactured or reproduced in the United States." It is not necessary in all cases where entry is made under item 864.05.

". . . The principal on the bond must account for all wastes but must export or destroy under Customs supervision within the bonded period only the valuable wastes. 'Valuable wastes' are those which have commercial value as scrap or otherwise." [17]

IMPORTS

Many different articles have entered under the provisions of item 864.05. Separate import statistics on such entries are not available; [18] such statistics that are available combine imports under item 864.05 with other imports entered duty-free for manufacture in bonded warehouses and export under the provisions of sections 311 and 312 of the Tariff Act of 1930, as amended (19 U.S.C. 1311, 1312).

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[10] The surety on the bond is twice the estimated duties that would apply if the goods were entered for final consumption in the United States.

[11] Headnote 1(a), subpart C, part 5, schedule 8, TSUS.

[12] Item 864.05 provides for articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States). . . . The column 1 (MFN) and column 2 (non-MFN) rates of duty for item 864.05 are "Free, under bond, as prescribed in headnote 1".

[13] These requirements are derived from the original enactment, Public Law No. 85–414, 72 Stat. 118, May 16, 1958. The Senate report on this legislation stated: "The bill contains specified conditions designed to safeguard the revenue and the substantive purposes of the Tariff Act. A complete accounting would be required to the Customs Service." S. Rep. No. 85–1485 (April 28, 1958).

[14] Headnote 2 provides—

2. Merchandise may be admitted into the United States under item 864.05 only on condition that—

(a) such merchandise will not be processed into an article manufactured or produced in the United States if such article is—

(i) alcohol, distilled spirits, wine, beer, or any dilution or mixture of any or all of the foregoing;

(ii) a perfume or other commodity containing ethyl alcohol (whether or not such alcohol is denatured), or

(iii) a product of wheat; and

(b) if any processing of such merchandise results in an article (other than an article described in (a) of this headnote) manufactured or produced in the United States—

(i) a complete accounting will be made to the Customs Service for all articles wastes, and irrecoverable losses resulting from such processing, and

(ii) all articles and valuable wastes resulting from such processing will be exported or destroyed under customs supervision within the bonded period.

[15] Headnote 1(a) *supra.*

[16] Cf. U.S. Customs Service, *Legal Determination 3552–08* (File No. 209152) concerning "exportation" pursuant to TIB procedures in the context to the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81c).

[17] ORR Ruling 77–0110 (November 4, 1977) (File No. 207275).

[18] For statistical purposes, such imports are not reported under item 864.05 but are shown in the published reports under the appropriate commodity item numbers in schedules 1 through 7. See Statistical Headnote 1, subpart C, part 5, schedule 8, TSUSA.

Such combined imports in 1978, the most recent year for which they are readily available, totaled $270.4 million of which imports valued at $93.6 million, or 35 percent, came from Canada. Other principal sources of such imports were the United Kingdom ($65.6 million), Sweden ($30 million), West Germany ($16 million), Japan ($14.9 million), France ($13.9 milioln), Italy ($11 million), and Mexico ($10.8 million).

TECHNICAL COMMENTS

This legislation would amend current TIB procedures applicable to all "valuable wastes". We note that other legislation is pending which would amend these procedures in the same manner, but limit the exemption to"metal waste of a kind described in part 2 of schedule 6 (but excluding lead, zinc, and tungsten waste)".[19] We are not aware of any opposition to the broader exemption for all valuable wastes which would justify the administrative costs involved in limiting the exemption to specific types of metal waste and scrap. There would be no loss of revenue under either legislative approach.

The amendment to headnote 2(b)(ii) would allow duties to be tendered (as an alternative to exportation or destruction under customs supervision) where these alternatives "are or would be economically unfeasible". The determination of whether the other alternatives are "economically unfeasible" would require an additional administrative process by Customs personnel, without any apparent corresponding benefit to the Treasury or to domestic industry. Further, this determination could result in differences of opinion between the Customs Service and the importers on the question of economic feasibility.[20] Accordingly, we suggest that the clause "and where either . . . economically unfeasible" (lines 3–5, page 2) be eliminated, and the phrase "may, in the alternative, be tendered" be substituted for "shall be tendered".

Headnote 2(b)(ii), as originally enacted by Public Law No. 85–414 amending subdivision 1 of section 308 of the Tariff Act of 1930, currently employs the terms "valuable wastes" and "bonded period". This legislation (page 1, line 6 and page 2, line 1) is drafted to read "valuable waste" and "bond period". We suggest that the bill be amended to correspond with the original enactment.

Line 6, page 2, reads "rates of duties". We believe this should read "rates of duty".

DEPARTMENT OF STATE

I have been asked to reply to your request for the views of the Department of State on H.R. 7167, a bill amending special provisions of the Tariff Schedules of the United States governing the entry and disposition of articles admitted temporarily free of duty under bond.

The special provisions of interest are administered by the Department of the Treasury and we defer to its views regarding the proposed amendment.

The Office of Budget and Management advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

STATE OF NEW YORK
EXECUTIVE CHAMBER,
Albany, May 13, 1980.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, Longworth Building, Washington, D.C.

DEAR MR. MARTIN: I am writing in support of H.R. 7167 which would amend the U.S. Tarriff Schedules to alleviate customs problems related to the processing of foreign steel in the United States.

Th present law does not deal adequately with the realities of the fabricating process. It provides that duty be levied on the waste which is created in processing the foreign material and not returned to the country of origin. The added expense involved is discouraging Canadian steel mills from having their steel

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[19] See H.R. 7184, 96th Congress, a bill to change the customs treatment relating to certain metal wastes resulting from the processing of merchandise admitted into the United States under bond.

[20] The phrase "economically prohibitive" is used analogously in the context of country of origin marking requirements. 19 USC 1304(a)(3)(G). See also, 19 CFR 134.32(c) and 134.32(o) (1979).

processed in the United States, although our processing plants on this side of the border have sufficient capacity to do so.

The bill would strengthen the economy of our border regions by restoring the competitive advantage of domestic steel processors located near the Canadian border. The minimal loss of revenue to the Treasury projected would be more than offset by tax revenues generated by more business for domestic steel processors as well as creation of new jobs.

I urge the adoption of the bill as a means of strengthening our nation's economy and would appreciate your making my letter part of the official record.

Sincerely,

HUGH L. CAREY,
Governor.

H.R. 7173

To extend for an additional temporary period the existing suspension of duties on certain classifications of yarns of silk.

U.S. INTERNATIONAL TRADE COMMISSION

PURPOSE OF THE LEGISLATION

H.R. 7173, if enacted, would amend items 905.30 and 905.31 of the Appendix to the Tariff Schedules of the United States (TSUS) to extend from June 30, 1980, until June 30, 1985, the expiration date for duty-free treatment of certain silk yarns.[1]

Item	Articles	Rates of duty 1	Rates of duty 2	Effective period
	Yarns, wholly of noncontinuous silk fibers (provided for in part 1D, schedule 3):			
905.30	Singles, not bleached and not colored, measuring over 58,800 yards per pound (item 308.40)	Free	Free	On or before 6/30/80.
905.31	Plied, not bleached and not colored, measuring over 29,400 yards per pound (item 308.50)	Free	Free	On or before 6/30/80.

Section 2 provides that such duty-free treatment shall apply to articles entered, or withdrawn from warehouse, for consumption after June 30, 1980.

BACKGROUND OF THE LEGISLATION

Duty free treatment of imports of silk yarns originated with the enactment of Public Law 86-235, approved September 8, 1959, which suspended the import duties imposed under paragraph 1202 of the Tariff Act of 1930 on spun silk or schappe silk yarn (not dyed or colored, singles of more than 58,800 yards per pound, or plied of more than 29,400 yards per pound) for three years, until the close of November 7, 1962. Duty-free treatment was continued by successive enactments to the close of November 7, 1965;[2] November 7, 1968;[3] November 7, 1971;[4] November 7, 1973;[5] November 7, 1975;[6] and, most recently, to the close of June 30, 1980.[7]

DESCRIPTION AND USES

These yarns are wholly of noncontinuous silk fibers and are either "singles, not bleached and not colored, measuring over 58,800 yards per pound" provided for in TSUS item 308.40 or "plied, not bleached and not colored, measuring over 29,400 yards per pound" provided for in TSUS item 308.50.

Such silk yarns are of two principal types: Standard spun silk (schappe) yarn and silk noil (bourrette) yarn. Standard or schappe spun silk yarns for general textile use are manufactured from long parallelized silk fiber stock recovered from waste cocoons and silk filature waste. They are used for making sewing thread, decorative stripings for fine worsteds, lacing cord for cartridge bags and,

[1] Items 905.30 and 905.31 provide temporary duty-free treatment for certain silk yarns as follows:
[2] Public Law No. 87-602, sec. 1; 76 Stat. 402; August 24, 1962.
[3] Public Law No. 89-229, sec. 1; 79 Stat. 901; October 1, 1965.
[4] Public Law No. 91-28, sec. 1; 83 Stat. 36; January 13, 1969.
[5] Public Law No. 92-161, sec. 1; 85 Stat. 485; November 18, 1971.
[6] Public Law No. 93-499 sec. 1; 88 Stat. 1549-1550; October 29, 1974.
[7] Public Law No. 95-172, sec. 1; 91 Stat. 1358; November 12, 1977.

in combination with other fibers, certain types of necktie fabrics, shirtings, dress and suiting fabrics, and upholstery and drapery materials.

Silk noil yarns are made from shorter length (and, thus cheaper) silk fiber stock than standard or schappe spun silk yarns, and are generally spun on wool-spinning machinery. The feedstock material consists of silk noils discarded as by-products in preparing silk waste for spinning standard spun silk yarns. Such yarns are used in mixture fabrics containing other fibers for various textile products, but especially for apparel. An important military use of silk noil yarns is in weaving silk cartridge cloth used to make powder bags for large-caliber ordnance.

TARIFF TREATMENT

Importations of these silk yarns would be dutiable under the following two TSUS provisions (if the duty is not suspended):

GSP	Item	Articles	Rates of duty 1	LDDC	2
		Yarns, of silk:			
		Wholly of noncontinuous silk fibers:			
		Singles:			
A	308.40	Not bleached and not colored	8.1% ad val.[1]	5% ad val.[1]	40% ad val.
		Plied:			
A	308.50	Not colored, measuring over 29,400 yards per pound	11.6% ad val.[1]	5% ad val.[1]	50% ad val.

[1] Duty on certain yarns, wholly of noncontinuous silk fibers, is temporarily suspended. See items 905.30 and 905.31, part 1B, Appendix to the TSUS. It should be noted that item 905.30 extends duty-free treatment only to part of the silk yarns dutiable under item 308.40; i.e., those yarns measuring over 58,800 yards per pound. Similarly, item 905.31 extends duty-free treatment only to part of the silk yarns dutiable under item 308.50; i.e., those yarns which are *both* not bleached *and* not colored, etc.

An "A" in the GSP column indicates that such articles are eligible for duty-free entry under the Generalized System of Preferences (GSP) when imported from beneficiary developing countries.[8]

The rates of duty on these silk yarns were reduced during the Multilateral Trade Negotiations (MTN) concluded in 1979. The final concession rates, 5 percent ad valorem, will become effective January 1, 1987. The concessions will be implemented in eight equal annual stages, the first stage taking effect January 1, 1980. The final MTN rates (5 percent ad valorem) have also been applied, effective January 1, 1980, to these silk yarns imported from countries which have been designated least developed developing countries (LDDCs). The yarns are not subject to the provisions of the Arrangement Regarding International Trade in Textiles (i.e., the MFA).

STRUCTURE OF THE DOMESTIC INDUSTRY AND DOMESTIC PRODUCTION

There is currently and has been no domestic production of these silk yarns in recent years.

U.S. IMPORTS

Imports of these yarns (virtually all of which are believed to have been classified in item 308.50) for the past 5 years are shown in the following tabulation:

	Quantity (pounds)	Value
Year:		
1975	6,000	$55,000
1976	6,000	48,000
1977	27,000	216,000
1978	48,000	547,000
1979	95,000	1,330,000

[8] See Exec. Order 11888 (November 24, 1975) effective January 1, 1976; and General Headnote 3(c), TSUS.

One company, Gerli & Co., Inc., New York, N.Y., accounted for most of the imports of these yarns during 1975–79.

The principal sources of these yarns in 1979 are shown below:

	Quantity (pounds)[1]	Value[1]
Country:		
Hong Kong	40,000	$614,000
Republic of Korea	36,000	496,000
People's Republic of China	14,000	135,000
Singapore	5,000	79,000

[1] This data is based on published statistics of the U.S. Department of Commerce for TSUS item 308.50.

Other countries from which imports were recorded in 1979 are Taiwan, Japan, Switzerland, and Italy.

POTENTIAL ANNUAL LOSS OF REVENUE

Imports of these silk yarns from the Republic of Korea, Singapore, and Taiwan could enter the United States duty-free under the GSP, even in the absence of this duty suspension. Therefore, based on 1979 non-GSP imports valued at approximately $141,000 and dutiable at the 1980 rate of 11.6 percent ad valorem,[9] the loss of revenues is estimated to be approximately $16,400 on an annualized basis.

Although imports of these yarns have shown a tremendous increase from 1975 to 1979, it is believed that the market for them is limited and is not expected to expand at the same rate during 1980–85. Accordingly, the expected annual revenue loss should remain in the range of $15,000–20,000 based on increases in the value of these imports coupled with the MTN staged duty reductions.

NEW YORK, N.Y., *May 7, 1980.*

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN VANIK: On behalf of my client, Adolf O. Fuchs, Inc. ("AOF") White Plains, New York, an importer of spun silk yarns, I am writing in support of H.R. 7173, a tariff bill recently introduced by Congressman Richard T. Schulze to extend for an additional temporary period of five years the existing suspension of duties on certain classifications of yarns of silk. We do not expect any opposition to this bill and, thus, we are filing this statement in lieu of a personal appearance before the Committee at the public hearing that is scheduled to take place on Thursday, May 8, 1980.

H.R. 7173 would temporarily permit until July 1, 1985 the duty free entry of single and plied silk yarns, continuing a "temporary" duty suspension[1] which has been in effect since 1959. The original suspension of duty on spun silk yarns was enacted by Public Law 86–235 approved on September 8, 1959. The most recent suspension, enacted into law on November 12, 1977, shall expire on July 1, 1980. See 91 Stat. 1358. See also House Report (Ways and Means Committee) No. 95–426, dated June 16, 1977, and Senate Report (Finance Committee) No. 95–434 dated September 15, 1977 for the most recent prior legislative history concerning this suspension.

The bill, by modifying TSUS 905.30 and 905.31, would continue until July 1, 1985 the suspension of the collection of duty with respect to the importation of such single and plied silk yarns.

Spun silk yarns are of two principal types: standard spun silk (schappe) yarn and silk noil (bourrette) yarn. Standard or schappe silk yarns are manufactured from long parallelized combed silk fiber stock recovered from byproducts derived

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[9] The rate applicable to TSUS item 308.50 in 1980.

[1] But for this suspension, single silk yarns (not bleached and not colored) would be dutiable under the Tariff Schedules of the United States ("TSUS") item 308.40 at a column 1 (MFN) rate of duty of 8.1 percent ad valorem, a LDDC rate of duty of 5 percent ad valorem and a column 2 (non-MFN) rate of duty of 40 percent ad valorem. Similarly, plied silk yarns (not bleached and not colored) would be dutiable under TSUS item 308.50 at a column 1 (MFN) rate of duty of 11.6 percent ad valorem, a LDDC rate of duty of 5 percent ad valorem, and a column 2 (non-MFN) rate of duty of 50 percent ad valorem.

during the reeling of raw silk from cocoons, and are used for making sewing thread, decorative stripings for fine worsteds, necktie fabrics and, also in combination with synthetic fibers such as polyester, certain types of shirtings, dress and suiting fabrics, upholstery and drapery material.

The silk noil type of yarn is made from shorter length silk fiber stock than standard or schappe spun silk and is generally spun on wool-spinning machinery. The material used consists of silk noils combed out as by-products in preparing silk waste for spinning in standard spun silk yarns. Such yarns are much coarser (e.g., no finer than 8,000 yards per pound or less) than standard silk yarns, produce a "tweedy" effect and are used in combination with other fabrics to make knitted and woven sportswear.

Spun silk yarns are manufactured in Japan, China, India, Italy, South Korea, and Brazil. Silk yarns have not been produced in the United States since shortly after the Second World War. There are no manufacturing facilities for such production in the United States at this time.

The various public laws which have since 1959 continued the supension of these duties, were enacted in order to permit domestic producers of fine fabrics to import fine silk yarns free of duty and thus enable them to produce fine yarn fabrics which are competitive with similar products imported from abroad. The reason which justified the original and prior suspensions of this duty justify the further continuation of this "temporary" suspension.

For the reasons set forth above, on behalf of AOF and other importers and users in the United States of spun silk yarns, we urge the Commitee to recommend the enactment of this bill.

It is further recommended that the Commitee (either as part of this bill or as part of any subsequent legislation that may be introduced) consider enlarging the proposed suspension to cover certain coarser silk yarns in addition to the finer spun silk yarns referred to above. The same reasons which support the continuation of the current suspension would support its extension to cover these coarser yarns (e.g. less yards of yarn per pound). There are no domestic producers of such coarse silk yarns. Thus, by allowing such yarns to enter duty-free, domestic producers which use such yarns to produce certain fabrics can compete more favorably with similar fabrics imported from abroad. In this connection, AOF would recommend that TSUS items 308.45 and 308.50 be modified by reducing in each case the number of yards per pound to 20,000[2] and by enlarging the suspension to cover these items.

Respectfully submitted.

ERIC D. MARTINS,
(On Behalf of Adolph O. Fuchs, Inc.)

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[2] This number was selected because to the best knowledge of AOF there are no domestic producers of silk yarn with a fineness of more than 20,000 yards of yarn per pound, and thus no domestic producer would be injured by such suspension.

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